

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Roger Brott (Applicant)  
**AND** Green Contracting & Hire Limited (Respondent)  
**REPRESENTATIVES** Roger Brott In person  
Claire Nickalls, Counsel for Respondent  
**MEMBER OF AUTHORITY** Philip Cheyne  
**SUBMISSIONS RECEIVED** 15 March 2006  
30 March 2006  
**DATE OF DETERMINATION** 4 April 2006

**COSTS DETERMINATION OF THE AUTHORITY**

[1] In a determination dated 21 December 2005, I found that Roger Brott was not an employee of Green Contracting & Hire Limited and dismissed his personal grievance and claim for arrears. Costs were reserved.

[2] I have received a letter from the respondent detailing its claim for costs to which Mr Brott has provided a response. This determination resolves the disputed question of costs.

[3] The respondent was legally represented during the investigation. I have been provided with copies of the solicitor's invoices dated 18 October 2005 for \$2,362.50 and 9 December 2005 for \$3,375.00. There are also several invoices for accommodation, meals (I infer) and petrol related to travel and accommodation for the respondent to participate in the investigation meeting. The respondent also refers to the cost of having its manager spend time at the meeting and do research related to the respondent's dealings with Mr Brott. Finally, reference is made to incidental costs such as photocopying and toll calls but no details are provided.

[4] Mr Brott says that costs should lie where they fall. He was dismissed from his employment although that should be seen as the respondent terminating its contract with Mr Brott in light of the finding about his status. He then tendered an account for final payment for services rendered which the respondent declined to pay. Solicitors for the respondent tendered a cheque for less than 25% of the amount claimed and asserted that Mr Brott had defrauded the respondent. Mr Brott challenged the respondent to take that allegation to court or to pay the full value of the invoice but the respondent did not take up that challenge. He then approached the Disputes Tribunal but his application was declined on the grounds that it was an employment matter. Mr Brott sought assistance from the labour inspectors but that was declined, the claim not being for a statutory entitlement such as holiday pay. The choice then confronting Mr Brott was to forego the amount owed (about \$1,200.00) or seek a ruling on his status from the Authority.

[5] Mr Brott was prepared to participate in mediation but the respondent was not and argued strongly against a direction to mediation. On that basis I accepted that mediation would not contribute constructively to resolving the problem and arrangements were made for an investigation meeting. The respondent was not required to provide any written statements but was asked to be available to give evidence orally if required. Despite that, the respondent did prepare written statements. The respondent particularly focussed on the fraud allegation but that was not relevant to the central issue for the Authority.

[6] The argument by Mr Brott against the imposition of costs has merit given that background. In addition, much of the respondent's costs arise from the pursuit of the fraud allegation in order to justify the retention by it of the money claimed by Mr Brott. Nor there was any need for the purpose of the investigation meeting for the respondent to incur legal costs except for the brief involvement in a phone conference, the provision of some documents and attendance at the meeting which took about 3½ hours meeting time.

[7] Despite Mr Brott's argument, I consider he should contribute to the legal costs reasonably and necessarily incurred by the respondent. On my analysis, the work required by the Authority might have taken perhaps 5 or 6 hours professional time and I order Mr Brott to pay \$500.00 as a contribution to those costs.

[8] I acknowledge that the owners of the business had to put time and effort into dealing with this matter as did their manager but that is usually not recognised by a costs award and I see no reason to alter that approach in the present case.

Philip Cheyne  
Member of Employment Relations Authority