

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 2/09
5141361**

BETWEEN CANON NEW ZEALAND LIMITED
Applicant

AND MARK ALLRIGHT
Respondent

Member of Authority: Leon Robinson

Submissions received: 26 November 2008
 9 December 2008

Determination: 5 January 2009

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 11 November 2008, I granted a preliminary injunction restraining the respondent Mr Mark Allright ("Mr Allright") from acting contrary to a restrictive covenant contained within his individual employment agreement. There remain substantive matters for investigation but Canon New Zealand Limited ("Canon") by its counsel advises the Authority it is presently content with matters as they presently stand and does not intend to seek further intervention by the Authority. It does however ask the Authority to order that Mr Allright pay a contribution to its costs consequent upon the parties' failure to reach an informal resolution between them. I direct the outstanding substantive matters shall proceed to a preliminary conference on 2 March 2009 if they are not earlier withdrawn. I now determine costs and extend my gratitude to the lawyers for the help and assistance they have given the Authority to date.

[2] Canon's counsel advises the Authority Canon's costs are in excess of \$10,000.00 inclusive of GST and being approximately 49.8 hours of professional services. Canon asks for a contribution to its costs of \$5,000.00 plus GST and the lodgement fee disbursement.

[3] By his counsel, Mr Allright accepts the general principle that costs follow the event. That means that Canon having succeeded in obtaining the resolution it sought,

it ought also to have an order for costs. Mr Allright also says there is no reason to depart from the Authority's typically modest approach to costs. He submits he was at all times clear and open with Canon about his intentions and his legal position from the outset. He says his defence of Canon's application, at times referred to by the Authority as "emphatic", was in no way frivolous or vexatious.

[4] I accept Mr Bevan's submissions for Mr Allright. I am also prepared to accept Mr Hood's advice, as responsible counsel, as to Canon's actual and reasonably incurred costs.

[5] This is an equity and good conscience jurisdiction and costs awards in the Authority are generally modest consistent with the Authority's approach to its investigations. I have earlier extended my gratitude to the assistance provided by the lawyers to the Authority. I have no doubt that assistance has enabled this employment relationship problem to be resolved expeditiously.

[6] I am not informed of Mr Allright's ability to meet an award of costs against him. The investigation proceeded over one day during which I heard very able and thorough argument from both counsel. In all the circumstances, I consider it just and reasonable to make a tariff based award but with an adjustment upwards to reflect the nature and the urgency of the proceeding being as it was one for preliminary injunctive relief. Accepting as I do the upper bound of the Authority's daily tariff at \$3,000.00, I shall permit an increase of a further \$1,000.00 which I am confident too, is appropriate to recognise the relative means of the parties. Accordingly, exercising my discretion on a principled basis and for the reasons outlined above, **I order Mark Allright to pay to Canon New Zealand Limited the sum of \$4,000.00 as a contribution to its costs.**

Leon Robinson
Member of Employment Relations Authority