

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Geoffrey Maurice Downey (Applicant)
AND New Zealand Greyhound Racing Association Inc (Respondent)
REPRESENTATIVES Richard Harrison, Counsel for Applicant
Simon Menzies, Counsel for Respondent
MEMBER OF AUTHORITY Y S Oldfield
SUBMISSIONS 14 September, 11 October, 8 November 2005
DATE OF DETERMINATION 15 November 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

- [1] In a determination dated 18 August I concluded that Mr Downey was not an employee and that I had no jurisdiction to deal with his problem. That determination has been challenged and for that reason, Mr Harrison suggested that the determination of costs be deferred until the Court had issued its decision. However Mr Menzies did not agree to this course, and the Court has frequently reminded the Authority that the existence of a challenge does not operate as a stay in the Authority. I therefore proceed to determine costs.
- [2] Mr Menzies seeks a contribution of costs of \$1,000.00. He has not told me what the actual costs were except to say that they were more than three times the nominal 'reasonable' costs of \$2,250.00 (arrived at by applying the usual "rule of thumb" multiplier of 1.5 and an hourly rate of \$250.00 to the six-hour investigation meeting.)
- [3] Mr Harrison has argued that costs should lie where they fall, noting correctly that the determination records a comment indicating that this was a finely balanced case. He also said that the investigation was conducted efficiently and economically. This is also correct. In addition Mr Harrison asked me to take into consideration that Mr Downey is 62 years of age and unemployed. He is not in a secure financial position, although he was declined legal aid because his wife has a job.

Determination

- [4] The Authority sees many cases where the first question to be determined is whether the applicant party has come to the right forum. Applicants may not have much idea at all whether there was an employment agreement or a contract of a different type; they simply want to know where to go to get the problem addressed. If such cases are finely balanced it may be appropriate to let costs lie where they fall.

- [5] However, I am not persuaded that this is one of those cases. I did consider that the ‘real nature of the relationship’ contained a mix of elements. What tipped the balance was the evidence that Mr Downey was “*clear about the distinction between this form of agreement and one of employment*” and “*acted in reliance on [purported self employed status] in order in order to be able to recoup GST and other expenses.*” (Paragraph [23].)
- [6] Neither the nature of the case nor the assertions about Mr Downey’s financial position convince me that this is a case where costs should lie where they fall. I am satisfied that an order should be made in line with Mr Menzies’ very reasonable claim for costs.
- [7] Mr Downey is ordered to pay to the New Zealand Greyhound Racing Association Inc the sum of \$1,000.00 as contribution to its costs.**

Y S Oldfield
Member of Employment Relations Authority