

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 54A/08
5078206

BETWEEN MATTHEW JOHN EVANS
 Applicant

AND GIBBSTON VALLEY WINES
 LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Ian Grant, Counsel for Applicant
 Don Rhodes, Advocate for Respondent

Submissions received: 26 May 2008 from Respondent
 5 June 2008 from Applicant

Determination: 1 July 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 2 May 2008, I found that Mr Evans was not an employee and that the Authority therefore did not have jurisdiction to investigate his personal grievances. I reserved the issue of costs.

The submissions

[2] Mr Rhodes lodged submissions as to costs on behalf of Gibbston Valley Wines Limited. He says in his submissions that the costs to the respondent for his services in preparing for and attending the investigation meeting is \$1,092.65 (GST inclusive) and that the costs are reasonable. Mr Rhodes advises in his submissions that there is a discounted rate for the respondent because it belongs to the Otago/Southland Employers' Association and there is no charge for travel or other disbursements.

[3] Mr Grant, on behalf of Mr Evans, submits that there was a legitimate question to be determined between the parties by the Authority. Mr Grant submits that the status of the relationship between Mr Evans and Gibbston Valley Wines Limited was not as obvious as Mr Rhodes submits. Mr Grant submits that it would not be in the interest of justice to award costs against Mr Evans and that costs should lie where they fall. If there is to be an award, Mr Grant submits that it be a nominal award of costs.

Determination

[4] Gibbston Valley Wines Limited was a successful party and I find there is no good reason to depart from the usual principle that a successful party is entitled to a contribution towards their costs. The costs claimed are reasonable. The principles to be applied in determining costs are those set out in *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808.

[5] I accept Mr Grant's submissions that determining the real nature of the relationship between parties is not a straightforward matter particularly where there is no written contract. It was important to the parties that the preliminary issue be determined.

[6] The meeting took about half a day and there were no complex legal issues.

[7] In all the circumstances, I order Matthew Evans to pay to Gibbston Valley Wines Limited the sum of \$600 as a contribution towards costs.

Helen Doyle
Member of the Employment Relations Authority