

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN	Kerry Finnigan (Applicant)
AND	Hanover Group Limited (Respondent)
REPRESENTATIVES	David France, Counsel for Applicant Caitlin Wright, Counsel for Respondent
MEMBER OF AUTHORITY	Leon Robinson
SUBMISSIONS RECEIVED	21 July 2006 4 August 2006
DATE OF DETERMINATION	6 September 2006

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 7 July 2006, I made various formal orders to resolve the parties' employment relationship problem. They have been unable to agree costs and both have lodged memoranda to assist me in the exercise of the Authority's discretion.

[2] In exercising its discretion, the Authority determines what is a fair and reasonable contribution as between the parties. It adopts a principled approach taking into account relevant matters and has no regard for irrelevant ones.

[3] The Authority held an investigation meeting on 22 December 2005. It determined that Mr Finnigan had not acted in breach of the terms of a Deed of Settlement between the parties and that Hanover was not entitled at law to cancel that Deed. Mr Finnigan was found to be entitled to enforce the terms of the Deed of Settlement. He now seeks costs on an indemnity basis. The costs are advised to the Authority as the sum of \$29,168.84. It is submitted that the importance of the matter and the level of money involved, justified the instruction of both senior counsel and Queen's Counsel.

[4] Hanover says indemnity costs are not justified. It submits an award of \$2,520.00 plus disbursements, or \$4,000.00 plus disbursements is more correct.

[5] I have no reason to doubt the veracity of the costs advised to the Authority by responsible counsel. Although costs in the order of \$29,000.00 are unusual in this forum and not to be encouraged, I accept they are actually and reasonably incurred in this instance having regard to the quantum involved and the commercial sophistication of the subject matter of the problem and the parties.

[6] I am not persuaded that this is an appropriate case for full solicitor/client costs on the basis of where the courts have held such awards appropriate¹. Rather, I consider the Authority's conventional approach as approved by the Court in *PBO Limited -v- Da Cruz*² is appropriate. However, having regard to Hanover's initial failure to respond to formal demand and my substantive finding of no material breach justifying cancellation even if such breach was proved, I consider a greater contribution and a departure from the conventional modest approach is called for.

[7] That being so, I turn now to assess what a reasonable contribution as between the parties should be. Accepting as I do the reasonableness in these circumstances of the costs incurred, I consider then a contribution just less than 70% as submitted by Hanover is appropriate.

[8] Accordingly, exercising my discretion on a principled basis, I conclude a contribution of \$20,000.00 is appropriate. **I order Hanover Group Limited to pay to Kerry Finnigan the sum of \$20,000.00 as a contribution to costs.**

Leon Robinson
Member of Employment Relations Authority

¹ *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA)

² unreported, AC 2A/05, 9 December 2005