IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 320A/07
5074496

<blockquote>

BETWEEN   GRANT FORSYTH
Applicant

AND   TELSTRACLEAR LIMITED
Respondent

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Member of Authority: Leon Robinson

Submissions received: 31 October 2007
                         31 October 2007

Determination: 1 November 2007

DETERMINATION OF THE AUTHORITY AS TO COSTS

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[1]   By a Determination dated 15 October 2007, I determined that formal orders were not required to resolve the contended employment relationship problem between these parties.

[2]   TelstraClear Limited ("TelstraClear") now asks that Mr Grant Forsyth ("Mr Forsyth") be ordered to pay costs. Its counsel advises that TelstraClear's actual costs exclusive of GST are in the sum of $13,440.00 together with disbursements of $165.70. TelstraClear submits a contribution of $7,725.70 to its costs *"is an appropriate and fair award of costs"*. Counsel also submits that my finding that Mr Forsyth did not act in good faith ought to be taken into account in fixing costs.

[3]   Mr Forsyth's counsel refers the Authority to its own costs awards data for the six months to 30 June 2006 as published by the Department of Labour. Counsel points out that in the majority of cases, costs for one day investigation meetings fall between $1,000.00 and $2,500.00. Counsel resists an award of half of TelstraClear's actual costs as is sought. It is also submitted that there ought only be the usual "modest" award of costs because the facts came within a narrow compass, the witness

statements were relatively short, the bundle of documents was comparatively small, the dispute was confined to whether there was an "agreement" and finally, the Authority's questioning quickly pin-pointed the essential issues for determination. For these reasons counsel submits there ought only be a modest award of costs in the sum of $1,500.00.

[4]   Clause 15 of Schedule 2 of the *Employment Relations Act 2000* is as follows:-

15.   Power to award costs –

(1)   The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
(2)   The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[5]   The exercise of my discretion calls for a determination of what is a fair and reasonable contribution as between the parties. The Authority adopts a principled approach taking into account relevant matters and having no regard for irrelevant ones.

[6]   TelstraClear successfully resisted Mr Forsyth's claims and is therefore to be regarded as the successful party. It is entitled to a contribution to its costs. This is equity and good conscience jurisdiction and costs awards in the Authority are generally modest consistent with the Authority's approach to its investigations as described in *Wilson and Grey Power Publishing Co Ltd*[1].

[7]   The investigation meeting proceeded over one day. Counsel also provided submissions in writing together with further submissions at the Authority's request. I regard the total investigation meeting time as 10 hours. Applying a multiplier of 2 that is a total of 20 hours total professional involvement. I consider that an hourly rate of $250.00 is reasonable and at that rate, total notional reasonable costs in the sum of $5,000.00.

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[1] unreported, AA58/03, 4 March 2003, A Dumbleton

[8]   I consider that Mr Forsyth ought to contribute to that notional sum in the greater proportion of $3,000.00 and which shall be inclusive of disbursements.

[9]   Accordingly, exercising my discretion on a principled basis, I conclude a contribution of $3,000.00 is appropriate. **I order Grant Forsyth to pay to TelstraClear Limited the sum of $3,000.00 as a contribution to TelstraClear's costs.**

Leon Robinson
Member of Employment Relations Authority