

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN George Fox (Applicant)
AND General Distributors Limited (Respondent)
REPRESENTATIVES Mark Ryan, Counsel for Applicant
Stephen Langton, Counsel for Respondent
MEMBER OF AUTHORITY Alastair Dumbleton
COSTS SUBMISSIONS
RECEIVED 28 October 2005 and 7 February 2006
DATE OF DETERMINATION 21 February 2006



DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] Following an investigation meeting in which Mr George Fox and his former employer, General Distributors Limited (GDL) took part, the Authority formally determined that Mr Fox's stated employment relationship problem was not in any way a matter GDL could be held legally responsible for. The Authority's reasoning for that determination is set out under AA 2/06 dated 10 January 2006.

[2] To conclude this investigation a further determination is now given as to costs, a question the parties have tried but have been unable to resolve by agreement.

[3] The submissions of counsel Mr Langton for GDL and Mr Ryan for Mr Fox, have been considered against the applicable legal principles as have been steadily developed by the Authority in the course of the many investigations completed by it since 2000. Recently the Employment Court has had occasion to review them and has given its approval of those principles. A list of many of them can be found at paragraph [44] of the Full Court's judgment in *PBO Ltd v Da Cruz* unreported, 9 December 2006, AC 2A/05.

[4] In respect of an investigation meeting that lasted a day and a half and that led to a determination entirely exonerating GDL of any blame for the warnings issued to Mr Fox and his subsequent resignation, GDL seeks \$4,500 all up as a reasonable contribution to actual costs. In final written submissions Mr Langton drew attention to three particular matters which were to do with delay on the part of Mr Fox during the investigation meeting. Some weight should be attached to these matters as it seems to me possible that with better management by the applicant of his witnesses this investigation could have been completed in less time that it took.

[5] For Mr Fox it has been realistically acknowledged that he should contribute to GDL's costs, but it is submitted that the award ought to be no more than \$1,500 to \$2,000. One factor relied

upon to limit the award is "undue financial hardship" that will be caused to Mr Fox if \$4,500 or anywhere near that sum is awarded against him. However no evidence has been tendered in support of that claim and nothing emerged during the investigation meeting itself to give the impression that Mr Fox is impecunious.

[6] It is undoubtedly correct as submitted that there is simply no comparison between the financial resources available to GDL and those of Mr Fox, but being relatively wealthy has never been a reason on its own for making a party bear the entire costs it was put to in responding to claims such as those unsuccessfully pursued beyond mediation by Mr Fox.

[7] Having considered each of the various applicable principles, those I regard as being of particular importance in this case are the need for equity and good conscience to be applied by the Authority, the relative modesty of awards that should be made by this unique investigative tribunal and the desirability for reasonable consistency in awards made by it. In this last respect a notional daily rate may properly be recognised in fixing costs; *Da Cruz* (above), at paragraph [44].

[8] Costs as sought of \$4,500 are too high for a case that although it had a little more depth of fact than normal gave rise to no unusual difficulty in matters of law. I consider that \$2,800 is an appropriate award and accordingly the Authority orders Mr Fox to pay that amount to GDL. The order is made under clause 15 of Schedule 2 of the Employment Relations Act 2000.



A handwritten signature in cursive script, appearing to read "A Dumbleton".

A Dumbleton
Member of Employment Relations Authority

