



Employment Court of New Zealand

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Hall v Cleaver [2013] NZEmpC 80 (10 May 2013)

Last Updated: 23 May 2013

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2013\] NZEmpC 80](#)

CRC 43/12

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

BETWEEN TONY HALL Plaintiff

AND TONY CLEAVER Defendant

Hearing: on the papers - memoranda received 15 February and 8 May 2013

Judgment: 10 May 2013

COSTS JUDGMENT OF JUDGE A A COUCH

[1] The defendant successfully pursued a personal grievance against his former employer, the plaintiff. The Authority ordered^[1] the plaintiff to pay the defendant arrears of wages and compensation for distress. The plaintiff challenged the whole of the Authority's determination and sought a hearing de novo.

[2] A statement of defence was filed and an initial telephone conference held. A further conference was scheduled to make arrangements for a hearing but, on the eve of that conference, counsel for the plaintiff filed a notice of discontinuance.

[3] On behalf of the defendant, Mr Donnelly now seeks an award of costs. Mr Bradshaw, counsel for the plaintiff was invited to provide a memorandum in response but has not done so.

[4] The actual costs incurred by the defendant are said to be \$802.70 including

GST. Disbursements of \$43.38 are also claimed.

[5] Mr Donnelly refers me to my decision in similar circumstances in *Bennett v Bright Wood New Zealand Limited*^[2] where I took the view that the plaintiff's decision to unilaterally discontinue the proceeding led to the inevitable inference that the challenge was without merit. In that case, I ordered payment of approximately

90 per cent of the costs actually incurred. Mr Donnelly asks me to go further in this case by awarding 100 per cent of actual costs.

[6] No explanation has been provided of the basis on which the costs charged were calculated and the nature of the disbursements said to have been incurred have not been identified. I must, therefore, assess the reasonableness of the award sought on the basis of my knowledge of the proceeding.

[7] In all the circumstances, I find that a just award in respect of costs and disbursements is \$750.00. The plaintiff is ordered to pay the defendant that sum.

[\[1\]](#) [2012] NZERA Christchurch 224.

[\[2\]](#) [2010] NZEmpC 74.

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