

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Brian Hollis (Applicant)

AND Aden Consultants Limited (First Respondent)
AND SAS Technologies Limited (Second Respondent)

REPRESENTATIVES Kelly Rowell, for Applicant
Chris Eggleston, for First and Second Respondents

MEMBER OF AUTHORITY Y S Oldfield

SUBMISSIONS RECEIVED 16 December 2004, 17 August 2005.

DATE OF DETERMINATION 11 November 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

Employment Relationship Problem

- [1] I determined the substantive employment relationship problem in this matter in January 2003. Subsequently a challenge to my determination resulted in a reduction in remedies for loss of earnings. At the parties' request I now proceed to determine the issue of costs.
- [2] For Mr Hollis Ms Rowell pointed out that costs should generally follow the event. In this case, the applicant was successful in his personal grievance claim, although he was not successful in secondary claims for a bonus and back pay. He incurred costs in the Authority of \$6,292.69 which Ms Rowell argues is reasonable given that the investigation was conducted in an appropriate and efficient manner. (The meeting lasted one day.) She seeks on his behalf a contribution to those costs of \$4,000.00.
- [3] Mr Eggleston for the respondents argued that they were successful in rebutting the majority of the applicant's claims which were for remedies in the sum of \$111,000.00. Amongst them was one for a back dated pay rise and one for payment of overtime worked. Mr Eggleston points out that the applicant chose to pursue them despite an early indication from me that they were unsustainable. This necessitated the attendance of the respondents' pay clerk at the investigation meeting and so extended its length. Awards were made in respect of the personal grievance only and totalled just \$16,500.00, further reduced by the Court.
- [4] Mr Eggleston noted that the respondents incurred costs associated with the investigation meeting in the sum of \$6,806.25. The respondents says that it would be appropriate for them to receive an award of costs of \$1,000, bearing in mind that the respondents were successful in defending the greater part of the applicant's claims.

Determination

- [5] I accept that the applicant was not successful in his arrears and penalty claims and so is entitled to costs in respect of the personal grievance only. I also accept that the meeting was extended, and the respondents put to additional cost, in relation to the investigation of the claims that were not successful. However, what is relevant is not the proportion of remedies recovered, but the time involved in investigating the respective parts of the employment relationship problem. The greater part of the material provided to the Authority related to the personal grievance as did the greater part of the time spent questioning witnesses at the investigation meeting. I note also that all parties were assisted by competent representatives which ensured that the investigation process was conducted in an economical fashion.
- [6] Taking all this into consideration I resolve the matter as follows. I estimate the time spent on the personal grievance at two thirds of the meeting and preparation time. I determine the appropriate level of contribution to the costs Mr Hollis incurred in respect of the personal grievance at 60%. Rounded off, therefore, the sum of \$2,500.00 would be a reasonable contribution to the personal grievance costs.
- [7] Set against this I consider that 60% would be a reasonable level of contribution to the costs the respondents incurred in defending the arrears claims (approximately a third of their total costs) and rounding this off again arrive at a figure for contribution of \$1,300.00.
- [8] Setting the two off against each other, I arrive at a conclusion that Mr Hollis is entitled to a contribution to costs of \$1,200.00.
- [9] The first and second respondents are ordered to pay to the applicant the sum of \$1,200.00 as a contribution to costs.**

Y S Oldfield
Member of Employment Relations Authority