

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 184A/07
251/05

BETWEEN PHILIP HOUSTON
 Applicant

AND OLDCO PTI LIMITED
 Respondent

Member of Authority: Marija Urlich

Representatives: Penny Swarbrick, Counsel for Applicant
 Anthony Drake, Counsel for Respondent

Determination: 10 December 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 20 June 2007 (AA184/07) Mr Houston's claim for unjustified dismissal was upheld. A dispute over contractual entitlements was resolved in Mr Houston's favour as were claims for holiday pay and expense reimbursement. Costs were reserved. The parties were invited to resolve costs themselves, they have been unable to do so and request that the Authority determine this issue.

[2] Mr Houston seeks a contribution of \$9,270 (incl GST) to actual costs incurred totalling \$11,898.28 (incl GST) and disbursements of \$270. Ms Swarbrick submits that the Authority's usual notional daily rate approach to costs should be increased given the following factors:

- (i) Mr Houston's costs were reasonably and necessarily incurred;
- (ii) Oldco's approach to its defence reflects in the level of costs necessarily incurred by Mr Houston - Oldco unreasonably denied Mr Houston was an employee, initially denied the existence of the January 2003 employment agreement, denied holiday pay was

outstanding contrary to its own records, appealed the Authority's refusal to grant a blanket suppression order as sought by Oldco (the appeal of which was found to be without merit, causing the first day of the investigation meeting to be adjourned) raised irrelevant issues of misconduct; and

- (iii) engaging specialist senior counsel was reasonable given the importance of the case to Mr Houston, the defence raised by Oldco and the amount of money at stake (\$500,000).

[3] Mr Drake submits that it would be appropriate and just for costs to lie where they fall:

- (i) Evidence to the Authority during the investigation meeting was that Oldco is no longer trading and has no funds to pay anything;
- (ii) the case had unusual features – no order for compensation was made by the Authority having regard to the serious difficulties in the parties' relationship; and
- (iii) Mr Houston's actions gave rise to the collapse of the group of companies concerned.

[4] It is usual that costs follow the event. Mr Houston was the successful party; he is entitled to a contribution to costs reasonably incurred. Oldco's submission that costs lie where they fall due to Mr Houston's conduct is not accepted. No findings as to culpability were made.

[5] Applying the *Da Cruz* principles to the particular circumstances of this employment relationship problem including that the first investigation meeting day was adjourned after Oldco's application for a blanket suppression order was declined and until judgment of the appeal was issued by the Employment Court, that the substantive issues between the parties then took a further two days to investigate and that at the heart of this employment relationship problem lay the parties' involvement in the dismantling and restructuring of a large group of companies which gave rise to a contractual entitlement dispute involving a large sum, I consider that a reasonable contribution to those costs should be \$8000 plus disbursements of \$270.

[6] Oldco PTI Limited is ordered to pay Philip Houston \$8270 in costs pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Marija Urlich

Member of the Employment Relations Authority