

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Bruce Jack (Applicant)
AND Faithfull Funeral Services Limited (Respondent)
REPRESENTATIVES Perry Skilton, Advocate for Applicant
Ferial Yasmin, Advocate for Respondent
MEMBER OF AUTHORITY R A Monaghan
MEMORANDA RECEIVED 19 and 24 April 2006
DATE OF DETERMINATION 1 May 2006

DETERMINATION OF THE AUTHORITY ON COSTS

[1] In a determination of the above matter dated 24 March 2006 I declined to set aside an agreement under which Mr Jack's employment was terminated, finding Mr Jack was bound by it and could not take his personal grievance any further. I also found there was a breach of good faith on the part of the managing director of Faithfull Funeral Services, but the breach did not warrant a penalty. Costs were reserved and the parties have filed memoranda.

[2] The advocate for Faithfull Funeral Services sought what appeared to be the full costs of representation, in the sum of \$3,690 plus disbursements of \$130. She sought further costs in the sum of \$2,656.76 in respect of Mr Faithfull's 'executive time' expended in addressing Mr Jack's claim, and reimbursement of the fee for a locum funeral director engaged while Mr Faithfull was attending the investigation meeting.

[3] The advocate for Mr Jack sought costs in favour of Mr Jack on the basis of my finding regarding good faith. In support he said Mr Jack 'would not have filed for a hearing if Brenton Faithfull had been full and frank about the situation of his redundancy, as the determination has found.' The determination found that Mr Faithfull was less than full and frank about his plans for a particular employee, but that this did not affect the genuineness of Mr Jack's redundancy. The determination went on to say Mr Jack was entitled to satisfy himself about those plans. However there was no finding that Mr Jack would have refrained from 'filing for a hearing' had Mr Faithfull been frank about the plans, nor even any evidence to that effect.

[4] Faithfull Funeral Services was the successful party in the majority of the matters in issue, and is entitled to a contribution to its costs. Mr Jack's success on what was a relatively minor point in the circumstances does not mean he becomes entitled to an award of costs – rather the matter may be invoked to discount the amount that would otherwise be awarded to Faithfull Funeral Services.

[5] On the other hand, Faithfull Funeral Services' success does not mean it is entitled to an award of full costs. Such awards are made only rarely. Instead this is a matter which, with

reference to the principles set out by the full Employment Court in **PBO Limited v Da Cruz** (9 December 2005, AC2A/05), warrants an award within the range usually awarded by the Authority. Time spent on the investigation meeting took about a full day in total. I apply a small discount in respect of Mr Jack's success, and order Mr Jack to contribute to Faithfull Funeral Services' costs of representation in the sum of \$1,000, inclusive of office disbursements.

[6] Regarding the claim for executive time, Mr Faithfull attended the investigation as a witness. His company, as the employer and responding party, was represented by an advocate. In the absence of any special reason to the contrary the company is not entitled to recover the full costs associated with Mr Faithfull's instructing the advocate and preparing for and attending the investigation meeting. There was nothing to suggest these activities amounted to any more than those usually associated with instructing a representative and appearing as a witness. However Faithfull Funeral Services can claim witness' expenses in respect of Mr Faithfull and another witness who attended the investigation meeting, and I accept that the locum's fee was a claimable expense.

[7] Accordingly Mr Jack is ordered to pay to Faithfull Funeral Services the following sums by way of disbursements and expenses:

- (a) witnesses' fees in the sum of \$80 for Mr Faithfull and \$25 in respect of Mrs Litherland;¹
- (b) travelling costs for Mr Faithfull and Mrs Litherland respectively at 38c per kilometre²;
- (c) parking costs of \$30; and
- (d) the locum's fee of \$270.

Summary of orders

[8] Mr Jack is ordered to pay to Faithfull Funeral Services the sums of:

- (a) \$1,000 as a contribution to costs of representation; and
- (b) \$405 plus travelling costs as expenses.

R A Monaghan
Member, Employment Relations Authority

¹ Witnesses and Interpreters Fees Regulations 1974

² As above