

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Andrew Jackson (Applicant)  
**AND** David and Aideen Parker trading as Café 111 (Respondent)  
**REPRESENTATIVES** Andrew Jackson In person  
Michaela Stevenson, Counsel for Respondent  
**MEMBER OF AUTHORITY** James Crichton  
**SUBMISSIONS RECEIVED** 23 March 2006  
**DATE OF DETERMINATION** 4 May 2006

**COSTS DETERMINATION OF THE AUTHORITY**

*The application for costs*

[1] By determination dated 7 March 2006, the Authority resolved the employment relationship problem between these parties by dismissing Mr Jackson's application.

[2] Costs were reserved.

*The claim for costs*

[3] The respondent (Mr and Mrs Parker) through their counsel, as the successful party, seek a contribution to their costs of \$2974.05. That amounts to a contribution of 66 per cent of the total legal costs incurred by Mr and Mrs Parker.

[4] Mr and Mrs Parker contend through their counsel that the principles enunciated in *Reid v NZ Fire Service Commission* [1995] 2 ERNZ 38 and *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 are helpful in identifying a proper basis on which costs ought to be awarded.

[5] Certainly those decisions are helpful but the more recent decision of the Full Court in *PBO Limited v Da Cruz* AC 2A/05 must be considered the leading case on costs determinations by the Authority.

*Discussion*

[6] This was a case which was dealt with in a two hour investigation meeting. There were no complex legal or factual issues involved.

[7] Mr and Mrs Parker's counsel has helpfully provided a complete transcript of the costs that she has billed to Mr and Mrs Parker and they are in my opinion reasonable and proper for a matter of this kind.

[8] There is no reason in this case for the usual rule that costs should follow the event to be departed from but equally, I am not minded to award costs of the magnitude Mr and Mrs Parker seek. As the Full Court pointed out in *Da Cruz*, because of the informal and inquisitorial nature of the Authority's proceedings, awards of costs have generally been more modest than has been the case in the more formal setting of a Court of record.

[9] The Authority has frequently awarded costs on a notional daily rate and that daily rate at present seems to be in the range of \$2000-\$2500.

[10] On that basis then, a contribution to Mr and Mrs Parker's costs in the sum of \$1000 for a half day hearing would be an appropriate starting point.

[11] I do not think anything in the conduct of Mr Jackson entitles Mr and Mrs Parker to any premium over the base figure that I have referred to. Mr Jackson was entitled to bring his claim and to have it tested in the Authority's investigative process and there are no particular circumstances of this case which would justify departing from the usual principles.

### ***Determination***

[12] I direct that Mr Jackson contribute \$1000 to the cost of Mr and Mrs Parker's costs in successfully defending this claim.

[13] As Mr Jackson has not filed any submissions in relation to costs, despite the opportunity to do so, it is impossible for the Authority to judge his ability to pay such a sum immediately. Accordingly, the parties may need to agree some form of time payment.

James Crichton  
Member of Employment Relations Authority