

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Greig Johnston (Applicant)  
**AND** Commercial Helicopters Limited T/A Mountain Air (Respondent)  
**REPRESENTATIVES** Stephen Langton, Counsel for Applicant  
Glenys Steele, Advocate for Respondent  
**MEMBER OF AUTHORITY** Leon Robinson  
**SUBMISSIONS RECEIVED** 8 July 2005  
20 July 2005  
**DATE OF DETERMINATION** 17 August 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

**Application for Costs**

[1] By a Determination dated 22 June 2005<sup>1</sup>, I determined the employment relationship problem between these parties was to be resolved by orders that Commercial Helicopters Limited t/a Mountain Air (“Mountain Air”) pay to Mr Greig Johnston (“Mr Johnston”) the sum of \$3,493.14 as reimbursement and \$5,000.00 as compensation.

[2] The parties were invited to resolve costs between them but they were unable to agree. The representatives have lodged memoranda to assist me in the exercise of the Authority’s discretion.

**Costs in the Authority**

[3] It was said in *Harwood -v- Next Homes Limited*<sup>2</sup> and *Graham and Airways Corporation of New Zealand Ltd*<sup>3</sup> that average awards of costs fall between \$1,000.00 and \$1,500.00 for a one-day investigation meeting by the Authority. There was agreement too in those decisions of a trend towards a higher figure of between \$2,000.00 and \$3,000.00. It has also been held that generally, awards of costs in the Authority are modest consistent with the Authority’s approach to Investigations. That approach is as described in *Wilson and Grey Power Publishing Co Ltd*<sup>4</sup>.

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<sup>1</sup> AA231/05

<sup>2</sup> unreported, AC70/03, 19 December 2003, Travis J

<sup>3</sup> unreported, AA39/04, 28 January 2004, Alastair Dumbleton

<sup>4</sup> unreported, AA58/03, 4 March 2003, Alastair Dumbleton. See also the Authority’s Determinations in *Beardsley and Campac International Limited* AA39A/01, Yvonne Oldfield and *Henry and Youth Horizons Trust* AA107A/02, Ken Anderson.

[4] The principles and rules conventionally applied to applications for costs in traditional adversarial or trial litigation do not fit with the Investigative role of the Authority and the objects of the legislation which establishes it<sup>5</sup>. Those principles and rules continue to remain relevant however and the overall question is to determine what is a reasonable contribution to reasonable costs incurred. The Authority adopts a principled approach taking into account relevant matters and taking no account of irrelevant ones.

## Determination

[5] Mr Johnston's legal costs are evidently \$26,597.15 inclusive of GST. In addition there are also expenses of \$1,364.9. Mr Langton seeks an order for costs on a contribution basis in the sum of \$12,500.00 together with expenses.

[6] Ms Steele asks the Authority to consider an award of \$4,000.00.

[7] Mr Johnston succeeded in his claims against Mountain Air and he successfully resisted a claim against him for the sum of \$10,000.00. I note that his costs exceed the orders made by the Authority in his favour. I understand however, that he was principally concerned for vindication in terms of his future career in aviation. He is to be regarded as the successful party and costs shall follow that event, but on a contribution basis.

[8] I now assess a notional quantum of reasonable costs. The investigation meeting proceeded over two days. I consider a multiplier of two should be applied to total hearing time of 16 hours to yield total professional time involved of 32 hours. Applying an hourly rate of \$250.00 for experienced counsel that yields a notional sum of reasonable costs of \$8,000.00. Mountain Air shall contribute to that sum in the greater proportion by an amount of \$6,000.00. I regard that contribution as neither illusory for Mr Johnston nor punitive Mountain Air.

[9] I accept that Mr Gemmell's expenses of \$160.20 ought to be met but I decline to allow costs in respect of Professor Johnston. I allow the hearing fees of \$300.00 and the lodgement fee \$70.00. The total sum for expenses is \$530.20.

[10] Exercising my discretion on a principled basis, **I order Commercial Helicopters Limited trading as Mountain Air to pay to Greig Johnston the sum of \$6,000.00 as a contribution to costs together with expenses of \$530.20.**

Leon Robinson  
**Member of Employment Relations Authority**

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<sup>5</sup> *Harwood and Koia -v- Attorney-General*, unreported, AC8/04, 23 February 2004, Colgan J.