

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Terry King (Applicant)
AND Taskforce Recruitment Ltd (First Respondent)
AND A1 Jobs Limited T/A Taskforce Recruitment (Second Respondent)
MEMBER OF AUTHORITY Alastair Dumbleton
COSTS SUBMISSIONS RECEIVED Applicant, 15 September
Second respondent, 2 December 2005
DATE OF DETERMINATION 9 December 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] An order for costs is sought by Mr King who has had an employment relationship problem, a claim of unjustified dismissal, resolved in his favour by the Authority. Taskforce Recruitment Ltd (TRL) was found to be his employer and was ordered to reimburse Mr King lost wages of \$3,650 and to compensate him \$7,000 for hurt feelings and general distress.

[2] Although TRL was found by the Authority to have been the sole employer of Mr King, he has asked for costs to be awarded against the second respondent company A1 Jobs Ltd (A1) as well as TRL, on a joint and several liability basis. This is because Mr King believes that TRL cannot or will not pay any costs ordered by the Authority whereas A1 can pay or, if necessary, can be forced to pay.

[3] I cannot find any basis for making an order against A1. That company became a party to this case because Mr King applied for it to be joined with TRL after the investigation had commenced, but it was not subsequently found to be Mr King's employer. No doubt it was a company closely associated with TRL but the two are legally separate and distinct entities from each other, for legitimate commercial reasons. It would be the same situation if the respondents had been natural persons who were related or associated. The Authority often encounters cases where people actively assist relatives during investigations, perhaps even giving financial assistance, but that provides no basis for ordering them to pay costs in the event that the party they are helping may not be able to meet an award.

[4] As the interactions and interminglings of A1 and TRL were under the control of a common agent of those companies, Mr Royse, there might be better reason for joining him in the costs award. However the pre-employment check documentation clearly enough identified TRL as being

the employer and does not show that an attempt was made to mislead Mr King in this regard. There is therefore no proper basis for joining Mr Royse, and even less for joining A1.

[5] Not surprisingly no submissions on costs have been made by TRL, from whom Mr Langton has received no instructions. It is regrettable that Mr King will probably not see any of the wages or compensation he has been awarded and may also have to bear all of his legal costs without recovering the contribution TRL should be ordered to make. However the purpose of a costs award is to compensate for legal costs rather than to provide an alternative method of extracting the primary monetary remedies awarded.

[6] Having regard to the costs principles referred to by Mr Finnigan, I consider that \$2,500 will be a reasonable contribution to actual costs incurred for this investigation which was not in any way an unusual one for the Authority to conduct.

[7] TRL is to pay Mr King costs of \$2,500. The order is made under clause 15 of Schedule 2 of the Employment Relations act 2000.

A Dumbleton
Member of Employment Relations Authority