

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 182/08
5126237

BETWEEN L J MACKLE LIMITED
Applicant

AND CRAIG PAUL SHAW
Respondent

Member of Authority: Philip Cheyne

Representatives: Steven Rollo, Counsel for Applicant
Lois Flanagan, Counsel for Respondent

Submissions Received: 11 November 2008 for the Respondent
3 December 2008 for the Applicant

Determination: 3 December 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] On 5 June 2005 a truck owned by L J Mackle Limited was stopped by Police and an overloading offence infringement notice was issued. The company apparently had to pay a fine of \$10,000.00.

[2] Almost three years later on 4 June 2008 the company commenced proceedings against Craig Shaw who was driving the truck when Police stopped it. The company claims that Mr Shaw breached an implied term in his employment agreement, caused it loss and was obliged to pay it damages. In his statement in reply Mr Shaw denies liability for any loss suffered by the company in the circumstances and further says that the parties agreed on a final resolution of all employment matters sometime after 5 June 2005.

[3] The full and final settlement was apparently news to the company's solicitors so the Authority's phone conference was deferred while instructions were sought. Eventually the applicant withdrew the proceedings. There has now been an exchange of memoranda with Mr Shaw claiming indemnity costs for defending the proceedings and the company resisting that. This determination resolves the disputed question of costs.

[4] The company says that Mr Shaw failed to respond to a December 2007 letter of demand from its solicitors. If he had responded at the time and referred to the prior settlement the company says that the proceedings would not have been filed so Mr Shaw would not have incurred costs. It is said that Mr Shaw therefore bears some responsibility for the situation. I do not accept the point. The company should have sought mediation assistance before lodging proceedings with the Authority. That probably would have unearthed the existence of the full and final settlement. I do not know how the company came to ignore the binding settlement in the first place. However responsibility for that oversight (at best) should not be visited on Mr Shaw.

[5] The proceedings should never have been initiated because of the earlier settlement. It is appropriate to fully indemnify Mr Shaw for the reasonable costs of defending the proceedings.

[6] I am told that Mr Shaw's actual legal costs are \$2,000.00. No details of the work done or the rate charged have been provided. I can only assume that Mr Shaw's instructions required work beyond that necessary to defend the proceedings. Mr Shaw had to lodge a statement in reply having been served with the statement of problem. Counsel would have needed to get instructions, draft a statement in reply, seek approval and then lodge the statement with the Authority. It appears that counsel for Mr Shaw also acted for him in the earlier settlement so the file and back ground information was presumably accessible. I also infer that there was some discussion between counsel about providing a copy of the earlier record of settlement and its effect prior to the proceedings being withdrawn. Finally a brief memorandum on costs was provided.

[7] I agree with the applicant's point that the sum claimed in costs is excessive for the work required to defend the proceedings. I am left to estimate the time and costs reasonably required. An award of \$750.00 is appropriate to cover that. Accordingly I order L J Mackle Limited to pay to Mr Shaw costs in the sum of \$750.00.

Philip Cheyne
Member of the Employment Relations Authority