IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

WA28A/10
5276877

	BETWEEN	MANA COACH SERVICES LIMITED Applicant
	AND	BRENDA MARLENE TOATOA First Respondent
	AND	NEW ZEALAND TRAMWAYS AND PUBLIC PASSENGER TRANSPORT EMPLOYEES UNION INC Second Respondent

Member of Authority: G J Wood

Submissions Received: 14 May 2010

Determination: 1 June 2010

COSTS DETERMINATION OF THE AUTHORITY

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[1] The applicant withdrew its claims against the first respondent several weeks before the commencement of the investigation meeting. It had previously withdrawn claims for penalties against both respondents. It then unsuccessfully claimed that the second respondent was party, in breach of a mediated record of settlement, to several publications of information that it had agreed would remain confidential to the parties. The applicant had sought a determination that the respondent had breached the agreement, a declaration that it had breached its duty of good faith under the Act and an inquiry into damages for any breach of confidence and/or breach of duty of good faith, plus costs.

[2] I concluded that while the applicant believed that further publication of disputed matters was not allowed, the settlement agreement between the parties did

not provide so either specifically or by implication. I therefore accepted that despite being party to the publications, the respondent was not in breach of the settlement agreement, although it did need to note that it had lost the trust of the applicant (which no longer wished to deal with it in mediation) and that it should address whether its continued publication of the historical allegations were in the interests of it and its members.

[3] The successful respondents now claim $6,000 towards the costs of the half day investigation meeting in the Authority. It was noted that the first respondent incurred costs of $1,200 plus GST, while the second respondent incurred costs of $6,750 plus GST.

[4] The applicant claims that costs should lie where they fall. It was submitted that proceedings were withdrawn against the first respondent when it became clear that it was the second respondent that was involved in the publications with which issue was taken. It was also submitted that senior officials in the second respondent facilitated the publication of the article of concern and that the second respondent had lost the trust of the applicant, as noted in the Authority's determination. In all the circumstances, therefore, it considered that equity would be served by making no award for costs.

[5] In response the respondents noted that they had been successful in defending the claims and that in any event the applicant did not come to this matter with clean hands.

[6] I conclude that this is an appropriate case for costs to follow the event. I observe, with no disrespect, that the first respondent was merely a *bit piece* in this case, and that the applicant never had any prior evidence that she had been involved in any of the alleged breaches. I therefore conclude that $1,000 is an appropriate contribution towards her costs.

[7] On the other hand, the matters between the applicant and the second respondent are industrial issues where equity and good conscience play an important part. As is implicit in my substantive determination, neither party should be pleased at the events that took place throughout this dispute, other than the fact that they reached settlement. Consistent with *PBO Ltd v Da Cruz* [2005] ERNZ 808 I therefore conclude that an award of $1,000 is appropriate in respect of the second respondent.

[8] I therefore order the applicant, Mana Coach Services Limited, to pay $1,000 in costs to the first respondent, Brenda Marlene Tuatua, and a further $1,000 in costs to the second respondent, New Zealand Tramways and Public Passenger Transport Employees Union Inc.

G J Wood
Member of the Employment Relations Authority