



Employment Court of New Zealand

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Milne v Air New Zealand Limited [2012] NZEmpC 69 (30 April 2012)

Last Updated: 5 May 2012

IN THE EMPLOYMENT COURT AUCKLAND

[2012] NZEmpC69

ARC 17/11

IN THE MATTER OF an application for security for costs

BETWEEN KATHLEEN ANN BEATTIE MILNE Plaintiff

AND AIR NEW ZEALAND LIMITED Defendant

Hearing: By submissions filed on 16 March and 10 April 2012

Counsel: Kathleen Ann Beattie Milne, plaintiff

Kevin Thompson, counsel for defendant

Judgment: 30 April 2012

INTERLOCUTORY JUDGMENT NO 2 OF JUDGE CHRISTINA INGLIS IN RELATION TO COSTS

[1] The plaintiff was ordered to pay security for costs in relation to her proceedings against the defendant following my interlocutory judgment of 20

February 2012.^[1] The parties were invited to reach agreement on costs but that has

not proved possible. The Court must now determine the issue.

[2] Both parties have filed memoranda in relation to the defendant's application for costs. The defendant submits that it incurred costs of \$6,500 plus GST in relation to the application, representing 23 hours of work at \$285 per hour. Details in respect of the attendances claimed for are set out in counsel's memorandum. Counsel accepts that the plaintiff's financial situation is relevant to a determination

of costs and seeks an award of costs of \$3,000.

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[3] The plaintiff has filed a brief memorandum pointing to what she describes as the "natural inequality" between the parties and submits that she suffers from work injuries, is unemployed and self-represented.

[4] The principles to be applied to awards of costs in the Employment Court are well established and are conveniently set out in *Binnie v Pacific Health Ltd*.^[2] It is generally recognised that a starting point for an award is two thirds of legal costs actually and reasonably incurred.^[3] This figure is then adjusted upwards or downwards to reflect other relevant factors.

[5] I accept that the defendant incurred costs of \$6,500, including GST, in relation to its application for security for costs. While such costs might, at first blush, appear to be on the high side for an interlocutory application dealt with on the papers, I am satisfied that they are reasonable having regard to the schedule of attendances set out in Mr Thompson's memorandum. These costs included costs relating to the preparation of documentation filed in support of the application and in considering and responding to extensive material filed by the plaintiff. I accept that this would have required a greater than usual

application of time, in order to consider, fully understand, and respond to the points raised by the plaintiff.

[6] The plaintiff is currently unemployed and appears to have limited financial resources. These factors are referred to in my earlier judgment on the application for security for costs.^[4] The ability of a party to pay a costs award has long been a relevant factor in the exercise of the Court's discretion. In *Order of St John Midland Regional Trust Board v Greig*,^[5] it was held that:

In exercising their unique equity and good conscience jurisdiction, I consider the Court and the Authority must have regard, in appropriate cases, to a party's ability to pay both when considering whether an award of costs should be made but more especially the amount of such an award. That has been a longstanding principle in this specialist jurisdiction

[7] The plaintiff's financial position is a factor that supports a substantial decrease in the amount of costs that might otherwise be awarded in the defendant's favour.

[8] Counsel for the defendant submits that recognition ought to be given to what is said to be the "high unlikelihood that there will be any intention on the plaintiff's part to pay costs awarded". I put that factor to one side as irrelevant.

[9] In all of the circumstances, and having particular regard to the plaintiff's financial circumstances, I consider that a relatively modest costs award of \$1,250 is appropriate. The plaintiff is accordingly ordered to pay the defendant the sum of \$1,250 by way of costs on the defendant's successful application for security for costs. That sum, together with the amount previously ordered by way of security for costs, is to be paid prior to the proceedings being set down.

Christina Inglis

Judge

Judgment signed at 11.30am on 30 April 2012

[1] *Air New Zealand Ltd v Milne* [2012] NZEmpC 25.

[2] [2003] NZCA 69; [2002] 1 ERNZ 438 (CA).

[3] At [14].

[4] *Milne* at [19]-[21].

[5] [2004] NZEmpC 83; [2004] 2 ERNZ 137 at [27].