IN THE EMPLOYMENT COURT
CHRISTCHURCH

CC 1/08
CRC 26/07
CRC 27/07

IN THE MATTER OF	proceedings removed from the Employment Relations Authority
AND	
IN THE MATTER OF	an application for costs
BETWEEN	NEW ZEALAND AMALGAMATED ENGINEERING PRINTING & MANUFACTURING UNION INC Plaintiff
AND	AIR NELSON LIMITED Defendant

Hearing: Memoranda received 6 & 21 December 2007

Court: Chief Judge G L Colgan
Judge B S Travis
Judge A A Couch

Judgment: 19 February 2008

COSTS JUDGMENT OF THE FULL COURT

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[1] In our substantive judgment (CC 22/07) we expressed our inclination to regard this as a test case in which no order for costs should be made but invited counsel to provide memoranda if they wished to persuade us to a different conclusion. Mr France has since made submissions seeking an order for costs in favour of the defendant. Mr Wilton has replied submitting that costs should lie where they fall.

[2] Mr France's submissions are built on the proposition that this was not a test case and that costs should follow the event. In particular, he submits that this case

was no more than the application to the facts of this case of the principles developed by the full Court in *Finau v Southward Engineering Co Ltd* WC 17/07, 25 July 2007.

[3] We disagree. While both cases concerned the interpretation and application of s97 of the Employment Relations Act 2000 and, in particular, of the expression *"the work of a striking employee"* in s97, they did so in quite different contexts. *Finau* was concerned with existing, non-striking employees being asked to do particular work while other employees were on strike. This case was concerned with an employer subject to strike action having particular work done by independent contractors and its parent company carrying out other work. Our decision was consistent with that in *Finau* but dealt with situations outside the scope of *Finau*. The issues raised in this case were therefore novel ones. As they involved the interpretation of a significant provision of the Employment Relations Act 2000, they were also of considerable public importance.

[4] Contrary to Mr France's subsidiary submissions, we are also of the view that the decision in this case is likely to be of wider application than the particular facts of this case. Although the contractual arrangement between the defendant and Air New Zealand may have been unusual, it is ongoing and has the potential to be brought into question in future strike or lockout situations. Equally, there will be other employers who have their work done partly by employees and partly by independent contractors.

[5] We confirm our initial view that this was a test case and that costs should lie where they fall. Accordingly, there will be no order for costs.

A A Couch
Judge
for full Court

Judgment signed at 10am on 19 February 2008