

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Aaron Patterson (Applicant)
AND Millennium Electrical Limited (Respondent)
REPRESENTATIVES Aaron Patterson In person
Jeff Goldstein, Counsel for Respondent
MEMBER OF AUTHORITY Philip Cheyne
INVESTIGATION MEETING 9 August 2005
DATE OF DETERMINATION 1 December 2005

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 23 September 2005, I rejected Mr Patterson's claims made against his former employer, Millennium Electrical Limited. Mr Patterson worked for Millennium Electrical Limited for only about six weeks or so but in that time he says that there developed three different strands to his employment relationship problem. I found that Mr Patterson had no sustainable complaint about the feedback and support he was provided by his employer during the probationary period. Secondly, I found that there was no substance to his claim that he was dismissed for a reason other than that expressed by his employer. The third issue was his claim to have been unjustifiably dismissed. Applying the applicable test for justification, I was forced to conclude that Mr Patterson had been unjustifiably dismissed because of some significant deficiencies with the process by which Millennium Electrical Limited reached its decision. However, I was satisfied to a high standard of proof that he had nonetheless gained his employment with Millennium Electrical Limited by a fraudulent misrepresentation. In that circumstance, I found that Mr Patterson was not entitled to any remedies for the unjustified dismissal.

[2] Costs were reserved. The respondent has now lodged a submission regarding costs and I am satisfied that it has been forwarded to Mr Patterson at the addresses he had provided. The Authority advised Mr Patterson that he had twenty one days to respond to the respondent's submissions but nothing has been received. The period for any reply having elapsed, I now proceed to determine the unresolved issue of costs.

[3] I am advised by the respondent that it made an offer to settle the proceedings on a 'without prejudice accept as to costs' basis several weeks prior to the investigation meeting. That represents a realistic approach to the proceedings on the part of the respondent but it makes little difference to the question of costs now as the respondent was successful.

[4] I am also told that the respondent's costs amount to \$5,000.00 plus GST which represents twenty five hour's professional time. The investigation meeting took a day. I also accept the point made by Counsel for the respondent that the applicant's case was initially presented in a manner

that required additional work on the part of the respondent. However, the respondent has not given any indication of what it considers would be a reasonable contribution to its costs.

[5] The compelling feature in this matter was Mr Patterson's fraudulent misrepresentation about his Australian registration as an electrician. Mr Patterson must have known about that and it is a feature that should have caused him not to pursue his claims against the respondent despite the procedural errors on its part. I consider the just approach to resolving costs in this matter is to require Mr Patterson to reimburse the respondent for all its legal costs necessarily incurred in dealing with the investigation process. I need to make an assessment of the costs necessarily incurred by the respondent because of the following three factors.

[6] Firstly, the respondent pursued a counter claim against Mr Patterson for penalty for an alleged breach of his Employment Agreement. I found the claim for penalty not made out so there should be a minor discount of time to recognise that.

[7] Secondly, the respondent made an application for an order for security for costs but in the end did not pursue a formal determination of that application. In the circumstances, the respondent is not entitled to any contribution to the costs involved with that aspect of the proceedings.

[8] Thirdly, I amended the arrangements for the investigation meeting and advised the respondent that it did not need to lodge any statements of evidence. By that time, I had received the applicant's statement of evidence and it seemed, on the basis of that material, that the best that he could expect was a pyrrhic victory. However, I first wanted to have the opportunity to raise some questions with the applicant before reaching that conclusion. However, the respondent elected to lodge and serve statements of evidence. Because that was not a necessary step in the conduct of the investigation, I do not intend to require the applicant to meet the cost of the time involved.

[9] Those three factors on my assessment would reduce the time involved by approximately five hours.

[10] I am left with the respondent incurring 20 hours professional time at \$200.00 an hour, a total of \$4,000.00 costs. I order Mr Patterson to pay Millennium Electrical Limited \$4,000.00 to meet all its necessary costs incurred in defending the proceedings.

Philip Cheyne
Member of Employment Relations Authority