IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 338/08
5081873

	BETWEEN	POSTAL WORKERS ASSOCIATION Applicant
	AND	NEW ZEALAND POST LIMITED Respondent

Member of Authority:	Robin Arthur
Representatives:	Simon Mitchell for Applicant Penny Swarbrick for Respondent
Submissions received:	18 August 2008 from Respondent None from Applicant
Determination:	26 September 2008

COSTS DETERMINATION OF THE AUTHORITY

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[1] By determination AA 280/07 (10 September 2007) the Authority declined to make declarations sought by the Postal Workers Association.

[2] The determination noted that New Zealand Post Limited had not sought costs but reserved leave for it to lodge an application for costs within 28 days from the date of the determination.

[3] On 18 August 2008 New Zealand Post lodged an application for costs to be determined by the Authority.

[4] The Authority's determination had been challenged by the Association. The Employment Court dismissed the challenge on 20 May 2008 with reasons issued by

Judge Travis on 23 June 2008 (AC 16A/08).

[5] New Zealand Post's costs application says it would be appropriate for the Authority to consider costs now as it has concurrently filed a memorandum as to costs in the Employment Court.

[6] The Association was provided an opportunity to lodge a reply to New Zealand Post's costs application in the Authority but has not done so.

[7] I decline to award costs to New Zealand Post in this matter for the two reasons.

[8] Firstly, the application is well outside the timetable for costs set by the determination issued 11 months ago. That timetable would have enabled any costs award by the Authority to have been considered with the challenge being heard in the Court, and for the Court to consider any necessary adjustment if the challenge had succeeded.

[9] Secondly, this case was a dispute about the interpretation and application of a phrase in a term of the parties' collective employment agreement. That is a type of case where costs would normally lie where they fall rather than be awarded to the successful party under the usual principle that costs follow the event.

[10] In *New Zealand Tramways Union (Wellington Branch) v Wellington City Transport Limited* [2002] 2 ERNZ 435, at [73], Chief Judge Goddard expressed the principle applicable here as follows:

> *In relation to [a] hearing before the Authority, it seems questionable whether the Authority should ever award costs when asked to assist parties by investigating the meaning of a collective instrument or by determining its proper application and operation.*

[11] The rationale for that approach to costs in disputes was put this way in *New Zealand Merchant Service Guild IOUW Inc v Interisland Line* (unreported, EC Wellington, WC 21A, 18 December 2003, Judge Shaw):

> *Parties to collective agreements should feel free to request assistance and rulings from the Employment Relations Authority and the Court where there are genuine disputes without the fear of facing orders to pay the costs of the victor. I emphasise the word "genuine". No doubt if the Court found that a dispute had been brought other than in good faith then this could be a factor which could influence the Court to make an award of costs.*

[12] Although they did not ultimately persuade either the Authority or the Court to their view, the Association members who gave evidence – who were working 'posties' – appeared to have genuine and deeply-felt views on how the relevant term of the employment agreement should be interpreted and applied in respect of their work. I am not aware of anything else to suggest that the dispute on which the Association unsuccessfully sought declarations from the Authority was not genuine or not brought in good faith.

[13] For these reasons, I consider this is a matter where costs in the Authority should lie where they fall.

Robin Arthur
Member of the Employment Relations Authority