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Puhia v Bernard Mathews NZ Limited AA434A/10 (Auckland) [2010] NZERA 905 (3 December 2010)

Last Updated: 13 December 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 434A/10 5299697

BETWEEN

CHRIS PUHIA Applicant

AND

BERNARD MATHEWS NZ
LIMITED
Respondent

Member of Authority:

Eleanor Robinson

Costs Submissions

12 and 17 November 2010

Determination:

3 December 2010

[1] In a decision dated 7 October 2010 the Authority found that the applicant, Mr Puhia, had raised his personal grievance in accordance with [s 114](#) (1) of the [Employment Relations Act 2000](#).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and the parties have filed submissions in respect of costs.

[3] An appeal in respect of the determination by the Authority has been lodged with the Employment Court and Mr Taylor, for the applicant, has submitted that costs should remain reserved pending the final resolution of this matter.

[4] [Section 15](#) of Schedule 2 of the [Employment Relations Act 2000](#) states:

15 Power to award costs

COSTS DETERMINATION OF THE AUTHORITY

(2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

(1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.

[5] Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*[\[1\]](#).

[6] Further, the then Chief Judge Goddard noted in *Registrar of Trade Unions v NZALPA*^[1] that costs normally follow the event and are independent of any appeal.

[7] However I have also taken into consideration the comments made by Colgan CJ in *NZ Automobile Association Inc v McKay*^[2] :

I am not suggesting that there should be any hard and fast rule that it is inappropriate to order costs upon an interlocutory application that it results in the survival of the substantive proceeding. Rather, in cases in which the merits of a grievance are brought to a low level, speedy and informal Tribunal have not been entertained, it may be more just to determine these as part of the overall settlement of the grievance.

[8] As the determination in this matter was on a preliminary issue, I have reached the conclusion that, whilst open to the Authority to make a decision on costs in relation to the determining of that matter in the Authority, it is appropriate to reserve the issue of costs pending the outcome of the final resolution in the Employment Court.

Eleanor Robinson

Member of the Employment Relations Authority

[\[1\] \[1996\] 2 ERNZ 622](#)

[\[1\] \(1989\) ERNZ Sel Cas 304](#)

[\[2\]](#)

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