

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Tony Sangster (Applicant)
AND Tanner Group Limited (Respondent)
REPRESENTATIVES Jo Douglas, Counsel for Applicant
Penny Swarbrick, Counsel for Respondent
MEMBER OF AUTHORITY Alastair Dumbleton
COSTS SUBMISSIONS 11,14 and 21 July 2005
RECEIVED
DATE OF DETERMINATION 21 September 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] As the parties have been unable to resolve the question themselves, the Authority must now fix costs between them in respect of the investigation into the employment relationship problem of Mr Tony Sangster.

[2] Under the Authority's determination dated 26 May 2005 (AA193/05), he succeeded in having some, but not all, of the legal responsibility for what happened to him cast upon Tanner Group Limited.

[3] Almost inevitably given the outcome of the investigation, in their costs submissions counsel take a different view of the amount of success their clients each had. One submits that Mr Sangster had very limited success and then only in respect of a minor issue, whereas the other submits that he was successful in respect of a fundamental issue. I consider the former view is more accurate. If the elevation by TGL of the hours of work issue into a disciplinary matter had been the only problem between the parties, it seems very doubtful it would have reached the Authority at all. To some extent it was an issue that attracted the attention of the Authority when exercising its roving focus under s.160(3) of the Employment Relations Act 2000.

[4] I therefore consider that TGL was the overall successful party and that in accordance with principle costs should largely follow that event.

[5] Unreasonably high levels of costs incurred by one or other party during an investigation have become all too familiar to the Authority. In this case however the costs to both parties have been relatively moderate for a case that was not without some factual complexity. TGL's costs were approximately \$7,000 - the contribution sought to those is \$4,000. Mr Sangster's actual costs were about \$9,000 - the contribution he seeks is \$4,800.

[6] The investigation meeting duration is not the only factor to consider in this case. The parties took on themselves quite a bit of the burden of the investigation, in preparing for the one day meeting. The problems for Mr Sangster grew out of three distinct but related events occurring in his employment, giving rise to a higher degree of factual complexity in this case, and this in turn required more careful preparation by the parties.

[7] The award of costs to TGL should be reasonably consistent with costs awards generally in the Authority, where they usually fall within the range of \$1,500 to \$3000 per day. The additional preparation required in this case should be met with an award at, or even above, the top end of the range, but some recognition must also be given to the success Mr Sangster did have in recovering \$3,500 for unjustified disadvantage.

[8] The departure of TGL from the agreed timetable for supplying various statements will not be taken into account in fixing costs, as I am not satisfied that such delays as were caused had the effect of increasing Mr Sangster's costs. Unlike some representatives, counsel Ms Swarbrick at least gave forewarning that the timetable would not be met, and she has subsequently offered a reasonable explanation for what happened.

[9] I consider that an award of \$2,800 takes account of all the factors outlined above. This amount represents nearly 75% of total notional reasonable costs (\$3,800), which are arrived at by multiplying hearing time by 2, to take account of preparation, and by then applying \$230, an hourly rate reasonably commensurate to the level of representation required in an investigation conducted by the Authority.

[10] Accordingly, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, Mr Tony Sangster is ordered to pay Tanner Group Limited \$2,800 as a reasonable contribution to legal costs incurred by the company.

A Dumbleton
Member of Employment Relations Authority