

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN David Scown (Applicant)
AND Bougen Transport (Respondent)
REPRESENTATIVES Paul Scown for applicant
Dianne Bromhead for respondent
MEMBER OF AUTHORITY Janet Scott
INVESTIGATION MEETING 28 January 2005
DATE OF DETERMINATION 25 July 2005

COSTS DETERMINATION OF THE AUTHORITY

Mr Scown alleged he had been unjustifiably dismissed. He was unsuccessful in his application.

In the determination issued on 11 March 2005 I recorded on the subject of costs “*Neither party was represented by legal counsel so costs are not an issue*”.

The respondent has since advised me that it had incurred costs in defending the matter through the services of Ms Bromhead who prepared the company’s case and represented it in dealings with the Authority and at the investigation meeting. The respondent asked that I consider its costs application in the sum of \$1500. The applicant has been advised of the application and given the opportunity to make submissions. No submissions have been received.

The Authority may, pursuant to Cl.4 of the Second Schedule of the Act, reopen the investigation in order to deal with the issue of costs. I consider it is reasonable to do so.

Discussion

The power to award costs is contained in the Second Schedule of the Employment Relations Act 2000. The general principles to be applied in cost applications are set out, in case law including *NZALPA v Registrar of Unions* (1989) NZILR,550, *Okeby v Computer Associates (NZ) Limited* [1994] 1 ERNZ 613 and *Reid v New Zealand Fire Service Commission* [1995] 2 ERNZ 38. The criteria to be taken into account include the importance of the case to the parties, the way the case was conducted, the conduct of the parties at the hearing, the amount of time required for effective preparation over and above that which would ordinarily be inferred, whether arguments lacking in substance were advanced or whether unduly legalistic and technical points were taken and the actual costs incurred.

In considering the question of costs in this matter the statement of the Court in *Harwood v Next Homes Limited* unreported AC 70/03 informs my determination. There the Court recognised that the

average award of costs in the Authority falls between \$1000 and \$1500 for a one-day hearing. I note that the issues here were not complex and the hearing was conducted efficiently over half a day. The costs claimed are reasonable.

Determination

In all the circumstances of this case then, I direct the applicant to pay to the respondent the sum of \$750 as contribution to its reasonably incurred costs.

Janet Scott
Member of the Employment Tribunal