

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 1B/08
5035340 and 5048075

BETWEEN	KEITH SMITH Applicant First Respondent (5048075)
AND	ENGINEERING & TECHNICAL RECRUITMENT LIMITED Second Respondent (5048075)
AND	CAREER ENGINEER LIMITED Respondent Applicant (5048075)

Member of Authority: R A Monaghan

Representatives: T Skinner, Advocate for Applicant/Respondents
P Akbar, Counsel for Respondent/Applicant

Submissions received: 3 April 2008 from Applicant/Respondents

Determination: 14 April 2008

**SUPPLEMENTARY DETERMINATION OF THE AUTHORITY
ON COSTS**

[1] I issued a determination of costs in the above matter¹ on the understanding that I had heard from both parties in terms of the timetable set in the substantive determination. Mr Skinner says he did not receive an opportunity to respond to that aspect of Mr Akbar's submissions on costs which related to Career Engineer's claims against Mr Smith for breach of contract and penalties. I have accepted that the timetable set in the substantive determination was not clear in its application. Accordingly I invited Mr Skinner to file the response and advised I would reconsider the order for costs on receipt of the response.

¹ **Smith v Career Engineer Ltd** 26 February 2008, AA 1A/08

[2] The response was filed. Much of it traversed matters arising out of the observance (or not) of the timetable in the substantive determination, but since I had advised the parties of my acceptance that the timetable was not clear it was not necessary to address those matters. In particular I do not accept Mr Skinner's exhortation to ignore Mr Akbar's submissions on the ground that they were not filed in accordance with that timetable. I take into account all submissions filed by both parties as they bear on costs.

[3] Much of the rest of the response traversed the history of the dispute about whether the parties' respective claims against each other should have been dealt with at the same or separate mediation meetings. Most of the factual background was available on the Authority's file. Such information as was not available, or which the parties may disagree about, is not enough to cause me to resile from my view that there is no reason to visit the result of the dispute on either party in costs relating to the substantive determination.

[4] Finally, I had determined costs on the basis of an attempt to balance the relative success of the parties on all aspects of their claims.

[5] Mr Skinner submitted in his response that Mr Smith was entitled to a contribution to his costs in respect of his unjustified dismissal, which I had already accepted. I understood Mr Skinner to be submitting, too, that Mr Smith was the more successful party overall or alternatively that costs should lie where they fall in respect of Career Engineer's claims. Whichever was the case, Mr Smith should receive an award in his favour.

[6] My original assessment was that Career Engineer was marginally more successful. The order for costs reflected that. Mr Skinner did not detail his reasons for suggesting Mr Smith should be considered the more successful party overall or that costs should lie where they fall in respect of Career Engineer's claims. The position in those respects appeared to have been influenced by the submission that I should ignore Mr Akbar's submissions, which I do not accept. Finally, with the possible exception of the dispute about mediation, no additional and relevant factual information not already available to me was provided.

[7] For these reasons I confirm the order contained in the original costs determination. That is, Mr Smith is to pay to Career Engineer the sum of \$750 as a contribution to its costs.

R A Monaghan

Member of the Employment Relations Authority