

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Harry Solo Solouata (Applicant)
AND New Zealand Van Lines Ltd (Respondent)
REPRESENTATIVES Rob Davidson, Counsel for Applicant
Jeffrey J McCall, Counsel for Respondent
MEMBER OF AUTHORITY James Crichton
SUBMISSIONS APPLICANT 14 August 2006
RESPONDENT 17 August 2006
DATE OF DETERMINATION 29 August 2006

COSTS DETERMINATION OF THE AUTHORITY

The applicant for costs

[1] By determination dated 28 June 2006, I declined Mr Solouata's claim for unjustified constructive dismissal but allowed his claim for a disadvantage as a consequence of New Zealand Van Lines Limited's unjustified action. Looked at on a commonsense basis, it could be said that Mr Solouata was 50% successful.

[2] The next factor I need to consider is that, after reviewing the evidence of contribution, I decided that Mr Solouata was 50% responsible for the events leading to his disadvantage personal grievance. Counsel for New Zealand Van Lines Limited invites me to reach the conclusion that that further dilutes Mr Solouata's entitlement to costs from 50% down to 25%.

[3] Counsel for Mr Solouata on the other hand says that Mr Solouata has incurred actual costs of \$6,500 net of GST and that neither the finding of contributory fault nor Mr Solouata's failure to prove his claim of unjustified dismissal ought to disentitle him to a reasonable contribution towards his costs.

Analysis

[4] Both parties accept that Mr Solouata is entitled to a measure of costs; the only issue is as to quantum. Mr Solouata was partially successful and was found to have contributed as to 50% in relation to the successful disadvantage grievance.

[5] Mr Solouata's submissions through his counsel indicate costs of \$6,500. Those costs are, in my opinion, reasonable having regard to the nature and extent of the investigation meeting and the likely preparation for it and the complexity of the issues that were in issue between the parties.

[6] The awarding of costs is a discretionary remedy and the principles applied by the Authority include the fundamental adage that costs will usually follow the event. This is a situation where in effect it is reasonable to summarise the position by saying that Mr Solouata has succeeded in one of his claims but not in the other and that even in the one that he has succeeded in, he has contributed to the circumstances of the grievance as to 50%.

[7] However, it is not appropriate to take contribution into account in assessing costs; that amounts to double jeopardy.

[8] Further, if Mr Solouata had only brought his successful claim to the Authority, investigating that matter alone would still have taken much of the time allocated to the matter.

Determination

[9] Having taken all those factors into account, I think a modest award of costs is appropriate and I award Mr Solouata the sum of \$2,500 as a contribution to his costs. I direct that New Zealand Van Lines Limited is to pay that sum to Mr Solouata.

James Crichton
Member of Employment Relations Authority