

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Annie Sullivan (Applicant)
AND Eagle Print Limited (Respondent)
REPRESENTATIVES Brian Spong, Advocate for Applicant
Robert Hucker, Counsel for Respondent
MEMBER OF AUTHORITY Marija Urlich
SUBMISSIONS RECEIVED 8 August, 9 September 2005
DATE OF DETERMINATION 6 October 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

Application for costs

[1] In a determination dated 4 July 2005 I found Mrs Sullivan was not an employee and upheld her status as an independent contractor.

[2] The parties were invited to resolve costs between themselves. In the event such attempts were unsuccessful leave was given for application to be made to the Authority to determine costs. The parties have not been able to agree the issue of costs and have filed submissions in the Authority setting out their respective positions.

Costs in the Authority

[3] The Authority has a discretion to award costs and expenses it thinks reasonable¹. The usual principles applicable to costs' determinations in a traditional setting are relevant to the Authority's exercise of its discretion, though such principles must be seen against the investigative nature of the Authority process and the objects of the Act.

[4] Recent costs tables compiled by the Department of Labour show most costs awards in the Authority range between \$2000 and \$2500 for a one-day hearing.

The parties' submissions

[5] Mr Hucker has made the following submissions:

- (i) the Authority should follow the principles set out in *Reid*²;

¹ Schedule 2 clause 15 Employment Relations Act 2000

² *Reid v new Zealand Fire Service* [1995] 2 ERNZ 38

- (ii) the respondent was the successful party and costs should follow the event;
- (iii) the respondent has acted reasonably to avoid a formal investigation – it raised the jurisdiction question early on and attended mediation;
- (iv) no novel point of law was involved;
- (v) the applicant prolonged the hearing by refusing to provide financial records;
- (vi) total hearing time, including submissions, was 2.5 – 3 days)
- (vii) total costs incurred are \$13,766.95; and
- (viii) the respondent seeks full indemnity costs.

[6] Mr Spong submits:

- (i) the applicant did not prolong the investigation unnecessarily and co-operated with the Authority's process;
- (ii) the investigation was prolonged because the respondent sought further financial information and clarification of that information;
- (iii) indemnity costs are not appropriate; and
- (iv) Mrs Sullivan's means to pay any costs award are limited.

Determination

[7] During the investigation meeting Mrs Sullivan was unable to answer questions regarding aspects of her tax status. This required further information to be requested. Given the nature of Mrs Sullivan's claim and the well established legal tests to be applied this was unfortunate. In addition it took a considerable amount of time for the financial information to be provided and the information finally received was not what was asked for, for which no explanation was received.

[8] Costs follow the event and the respondent has been successful in its challenge to the Authority's jurisdiction to hear Mrs Sullivan's claim of unjustified dismissal. The Authority's records show the investigation into this employment relationship problem covered two days; one full hearing day and two half days. Closing submissions were received during the two half days which were interrupted because further information was provided during the first half day which required an adjournment and subsequent reconvening. Following the filing of closing submissions the Supreme Court issued the *Bryson* judgment on which the parties were invited to file further submissions.

[9] This is not a suitable case for full indemnity costs; the provision of relevant tax information was only one of a number of factors which extended the time over which this investigation stretched. I accept that the prolonged timeframe of this investigation has added to the respondent's costs but I am not satisfied the responsibility for this is entirely Mrs Sullivan's.

[10] Weighing all the relevant issues, including Mrs Sullivan's restricted means, I set costs as \$3000. Mrs Sullivan is ordered to pay Eagle Print that sum in monthly instalments of \$1000 per month until such time as payments totalling \$3000 have been made.

[11] The parties may apply to vary this repayment schedule.

Marija Urlich
Member of Employment Relations Authority