

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Graham Tasker (applicant)

AND Berdeck Investments Limited (respondent)

REPRESENTATIVES The applicant represented himself
Peter Brosnahan for the respondent

MEMBER OF AUTHORITY Denis Asher

SUBMISSIONS 22 July and 4 & 8 August 2005

DATE OF DETERMINATION 12 August 2005

COSTS DETERMINATION OF AUTHORITY

Employment Relationship Problem

1. In my substantive determination dated 19 July 2005 (WA 122/05) I found against the applicant, Graham Tasker's, claim that the respondent, Berdeck Investments Limited, had unjustifiably or constructively dismissed him.
2. Costs were reserved.

Respondent's Position

3. In a submission received on 22 July, the Company's counsel, Mr Peter Brosnahan, says his client incurred costs of \$10,000. Because of the Company's co-operation and efforts to resolve the matter and the scope of Mr Tasker's claims, and the warning advanced to the applicant during the first telephone conference and the investigation itself of the risks he faced and the likely costs involved in proceeding with his application, a significant award of costs is sought.

Applicant's Position

4. Mr Tasker asks for costs to lie where they fall on the grounds that he co-operated in good faith in an effort to resolve this matter, that he had not been demanding as stated by the Company and that he was not warned of the risks of proceeding by the Authority but was instead informed as to the requirements for a successful outcome.
5. The parties were informed by the Authority at the investigation meeting that costs awarded could range between \$1,500 and \$3,000: as it happened the investigation meeting occupied only a half day.
6. Mr Tasker says he should not have to incur costs arising out of the legalism resulting from the Company's decision to engage a barrister, contrary to the Authority's role as a low level, accessible and informal institution.
7. The Company cannot recover its mediation costs: *Trotter v Telecom Corporation of NZ Ltd* [1993] 2 ERNZ 935.
8. The Company has not particularised its costs and they should lie where they fall.

Costs Decision

9. I see no reason in this case to depart from the well-established principle that costs should follow the event: *Harwood v Next Homes Ltd*, unreported, 19 December 2003, Travis J, AC 70/03. The Company is therefore entitled to recover a contribution to its reasonable costs.

10. I reach this conclusion also as a result of taking into account the notice extended to Mr Tasker as to the risks he was incurring in proceeding with his claim. This was last put to the applicant during the investigation so that he might explore the option of withdrawing his claim provided the respondent agreed to costs lying where they fell: as he makes clear in his submission, Mr Tasker elected to not pursue that option so as to leave open the possibility of a challenge to the Authority's substantive decision.
11. The Company's costs are not particularised so it is not clear what costs were incurred prior to the investigation and those arising out of the investigation itself.
12. Notwithstanding the statutory obligation on the Authority to act speedily and informally, the Company is entitled to be represented by a barrister: clause 2 (1) (b) (iii) of Schedule 2 of the Act.
13. Consistent with well-established case law, I see no reason to depart from the indication I gave to the parties during the investigation as to their costs risk. Having regard to the above and the duration of the investigation, I am satisfied that the applicant should pay to the respondent, as a contribution to its costs, the figure of \$1,500.

Decision

14. As is made clear above, I am satisfied that the applicant, Graham Tasker, should pay to the respondent, Berdeck Investments Limited, as a contribution to its fair and reasonable costs, the sum of \$1,500.00 (one thousand five hundred dollars).

Denis Asher

Member of Employment Relations Authority