

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Albertus Tijssen and Patricia Ruth Tijssen (Applicant)

AND Robert Cottle (First Respondent)
AND Infratech Inc (Second Respondent)

REPRESENTATIVES Timothy J Twomey, Counsel for applicant
Bob Cottle on behalf of the respondents

MEMBER OF AUTHORITY Philip Cheyne

SUBMISSIONS RECEIVED 18 May 2005
10 June 2005

DATE OF DETERMINATION 1 July 2005

COSTS DETERMINATION OF THE AUTHORITY

[1] This determination resolves the disputed question of costs following a determination that Infratech Inc is to pay Mr and Mrs Tijssen arrears of wages, interest and a penalty for breach of their employment agreements and Mr Cottle is to pay Mr and Mrs Tijssen damages for breaching section 12 of the Fair Trading Act 1986.

[2] In the first determination, costs were reserved. Since then, I have received a memorandum from counsel for Mr and Mrs Tisen and a written reply from Mr Cottle.

[3] The applicants are critical of Mr Cottle and say that he was obstructive with the result that their costs were increased. There is merit in that point. Conversely, they say that they conducted their own case properly, that it was important to them, and that careful preparation helped reduce the time taken during the meeting. Again, I accept there is merit in these points. They also point out that they suffered additional costs when the meeting had to be adjourned following no appearance by the respondents. I have some sympathy with the point but the difficulty is that the notice of investigation meeting had not been served on the respondents even though Mr Cottle was aware of the arrangements as a result of other communications. In that circumstance I decided it was better to adjourn and ensure proper service. I do not think the extra cost from this should now be visited on the respondents.

[4] The applicants say that their actual costs exceed \$7,500.00 and seek a substantial contribution from the respondents.

[5] Infratech Inc and Mr Cottle say that each party should cover their own costs. However, I see no reason to justify departing from the usual practice of the Authority that a successful party is entitled to a reasonable contribution to costs reasonably incurred in relation to the investigation meeting. The finding against Mr Cottle is criticised on the basis that the Authority made a wrong finding of fact. That criticism is not relevant to the present issue. If Mr Cottle believes that the Authority's original determination is wrong, the appropriate course of action is to challenge it in the Employment Court.

[6] An appropriate contribution to the applicants' costs in the present case is \$3,000.00. That is larger than is common for a meeting of less than one day but it needs to be to take account of the factors mentioned above.

[7] Costs need to be apportioned between the respondents. Infratech Inc largely acknowledged its salary debt to Mr and Mrs Tijsen so it is appropriate for it to contribute less to the total award. The preparation and meeting time for the Fair Trading Act 1986 aspect of the problem was greater because it was more complicated and was vigorously opposed by Mr Cottle. Accordingly, Infratech is ordered to pay costs of \$500.00 and Mr Cottle is ordered to pay costs of \$2,500.00.

Philip Cheyne
Member of Employment Relations Authority