

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 165
3038693

BETWEEN TRUCK STOPS (NZ) LTD
Applicant

A N D LUKE HADLAND
Respondent

Member of Authority: Helen Doyle

Representatives: Rosemary Wooders, Counsel for applicant
Renee Browne, Advocate for respondent

Investigation Meeting: 9 November 2018 in Christchurch

Submissions Received: 9 November 2018 from Applicant
9 November 2018 from Respondent

Date of Determination: 12 November 2018

**DETERMINATION AS TO COSTS (NO. 2) OF THE
EMPLOYMENT RELATIONS AUTHORITY**

- A Luke Hadland is ordered to pay to Truck Stops (NZ) Limited costs in the sum of \$500 together with reimbursement of the filing fee of \$71.56.**
- B Payment is to be made by instalments of \$75 per week in accordance with the schedule in this determination. Failure to make a payment in accordance with the schedule will result in the balance owing becoming due and payable.**

Employment Relationship Problem

[1] Truck Stops (NZ) Limited (Truck Stops) sought compliance with an Authority cost determination dated 1 August 2018.¹

[2] In the determination the Authority ordered Mr Hadland pay to Truck Stops the sum of \$2,600 being costs and \$296 for disbursements after a late discontinuance of his claim.

[3] The matter was set down for an investigation meeting on 9 November 2018.

[4] The Authority was advised on the morning of 9 November 2018 at 8.59am by Ms Wooders that she had recently been alerted to a payment of the full amount of costs owing under the determination by her client.

[5] A compliance order was not required however Truck Stops still wished to proceed with the investigation meeting in order to discuss the issue of costs on the application for compliance. An award of costs arising from the making of the application for an order for compliance was asked for in the statement of problem together with the filing fee.

[6] It is the issue of costs therefore that is the subject of this determination.

The investigation meeting

[7] Ms Wooders was connected to the investigation meeting by telephone and Ms Browne and Mr Hadland attended the meeting in person.

[8] Ms Wooders submits that Truck Stops actual legal costs in relation to the application for a compliance order are \$5,500. She submits that a reasonable award in the circumstances would be \$500 together with reimbursement of the filing fee of \$71.56.

[9] I accept costs were incurred in order to obtain compliance with the costs order. These included the drafting of the application with an affidavit in support. There was also correspondence between the parties, a telephone conference with the Authority to set the matter down for an investigation meeting and the provision of a memorandum in advance of the investigation meeting.

¹ *Luke Hadland v Truck Stops (NZ) Limited* [2018] NZERA Christchurch 108

[10] Ms Browne who is Mr Hadland's partner explained that at the time of the cost determination they were in Australia attending to an urgent family matter and therefore remained unaware of it. Their advocate she said lost contact with them. When they became aware of the order and the failure to pay steps were taken to resolve the matter culminating in the full payment of the costs order in the determination.

[11] I acknowledge full payment of the costs order was made by Mr Hadland. Unfortunately by the time the payment was made Truck Stops had incurred considerable costs in attempting to obtain the payment. On any reasonable assessment of the matter Truck Stops cannot be responsible for delays in Mr Hadland being advised of the costs order when the determination was sent to his advocate who was on the record.

[12] Costs are not to be used as a punishment but the Authority can, in the exercise of its discretion where costs have been reasonably incurred, make an order for a contribution towards those.

[13] Ms Wooders seeks a comparatively modest and reasonable contribution toward the cost of Truck Stops where there was compliance but only at the very last moment of \$500. She also seeks reimbursement of the filing fee of \$71.56. I find that such a claim is fair and reasonable.

Orders made

[14] Truck Stops are entitled to an award of costs of \$500 together with the filing fee of \$71.56. Ms Wooders said that if there is to be an instalment plan then it would be the view of Truck Stops that repayment should be at \$100 per week. Ms Browne said that \$75 would be more manageable. I find that payment of the sum owing at instalments of \$75 per week is appropriate in the exercise of my discretion.

[15] I order Luke Hadland to pay to Truck Stops (NZ) Limited the sum of \$500 together with reimbursement of the filing fee of \$71.56. Payment of the combined sum of \$571.56 is to be paid by instalments of \$75 per week by direct debit into Truck Stops bank account until paid in full in accordance with the schedule below.

[16] Failure to make payment of the amounts set out in the schedule by the specified date will result in the balance owing becoming due and payable.

Schedule of payments for the total sum of \$571.56

- (a) 19 November 2018 \$75.00
- (b) 26 November 2018 \$75.00
- (c) 3 December 2018 \$75.00
- (d) 10 December 2018 \$75.00
- (e) 17 December 2018 \$75.00
- (f) 24 December 2018 \$75.00
- (g) 31 December 2018 \$75.00
- (h) 7 January 2018 \$46.56

Helen Doyle
Member of the Employment Relations Authority