

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Les Watt (Applicant)

AND Canterbury District Health Board (Respondent)

REPRESENTATIVES Andrew McKenzie, Counsel for Applicant
Penny Shaw, Advocate for Respondent

MEMBER OF AUTHORITY Philip Cheyne

SUBMISSIONS RECEIVED 22 December 2006
29 January 2007

DATE OF DETERMINATION 13 February 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 11 August 2006, I upheld in part Mr Watt's claims against his former employer and awarded him a sum of compensation. Costs were reserved. On 22 December 2006, counsel for the respondent employer lodged a memorandum claiming costs against the applicant. Counsel for Mr Watt lodged a reply on 29 January 2007. This determination resolves the disputed question of costs.

[2] Counsel for the respondent referred to *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2006] 1 ERNZ 808 which I accept expresses relevant principles. In particular for present purposes, the usual approach is that costs follow the event.

[3] Mr Watt's claims against his former employer were a personal grievance of unjustified dismissal, a personal grievance of unjustified disadvantage and damages for breach of contract. There was considerable overlap in the evidence and grounds relied on for each claim. In the end, I upheld an unjustified disadvantage grievance and the overlapping breach of contract action but rejected the unjustified dismissal grievance. As one might expect, the dismissal was the more significant claim and Mr Watt's success led to a modest award of compensation or damages. I should also note that Mr Watt did not succeed with all the factual allegations advanced in support of the two claims on which the award was based.

[4] In essence the respondent is saying that it should be treated as having been successful for it to receive an award of costs. For Mr Watt, counsel makes the point that he succeeded on two out of three claims and that the evidence covered for the unsuccessful claim had to be heard (for the most part) in respect of the successful claims. Mr Watt's position is that costs should lie where they fall.

[5] I agree with counsel for Mr Watt. Because the respondent succeeded on the major part of the case, it would be wrong to award any costs against it in favour of the applicant. Similarly, because the applicant enjoyed a measure of success that was more than pyrrhic, it would be wrong to order

him to contribute to the respondent's costs. Accordingly, there will be no order of costs in favour of either party.

Philip Cheyne
Member of Employment Relations Authority