

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Mark Grenville Harvey Ward (Applicant)
AND Twin Turbines Limited (Respondent)
REPRESENTATIVES Mark Grenville Harvey Ward In person
Clive Bennett, Advocate for Respondent
MEMBER OF AUTHORITY Robin Arthur
INVESTIGATION MEETING 29 November 2005
DATE OF DETERMINATION 2 February 2006

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination AA 468/05 dated 7 December 2005 the applicant was declared to have been an employee of the respondent and awarded a total of \$2687.52 (less tax) for outstanding holiday and public holiday pay.

[2] The determination noted that the applicant had sought costs in an amended statement of problem prepared by an advocate. However at the investigation meeting Mr Ward represented himself. He abandoned additional claims raised in the amended statement of problem and reverted to the original claim he had prepared and filed. The determination notes that no award of costs appeared to be required but reserved leave for the applicant to apply if he considered there were grounds for an award of costs.

[3] The applicant now seeks costs and expenses totalling \$3442. He sets out expenses including travel and parking costs for meetings with lawyers and his accountants that he consulted earlier in his dispute, his travel and parking costs for attending the Authority investigation meeting, legal fees for a meeting at Mediation Services, travel costs and lost income for meeting with IRD, 11 visits to his tax consultants, mobile calls, and loss of income where various meeting occurred during working hours.

[4] The respondent replies that the applicant should not receive any costs as he abandoned allegations of unjustified dismissal and unilateral alteration of his employment agreement. Rather it seeks its costs of \$2500 for defending what it calls a largely unwarranted application. It says the respondent has ceased trading and has no funds. The Companies Office records for the respondent note that the Registrar of Companies is satisfied that this company has ceased to carry on business and has initiated action to remove the company from the register.

[5] The respondent says that in representing himself, the applicant incurred no legal costs. It submits that if the Authority will not award costs to the respondent, costs should lie where they fall.

[6] The Authority's statutory discretion to award costs is to be exercised on a principled basis that treats each case on its own facts and in equity and good conscience. Costs are not to punish the unsuccessful party but conduct unnecessarily increasing costs may be taken into account to reduce or increase an award. The Authority may consider the reasonableness of the costs incurred and may, where appropriate, apply a notional daily rate, to determine a reasonable contribution to reasonably incurred costs.

[7] In this case there do not appear to be legal costs and expenses to which the applicant is entitled to have a contribution. He is not entitled to the \$200 legal fees he claims for assistance in a mediation meeting. The costs of travel, parking and lost income in relation to time required for the Authority investigation are a normal incidence of an application to this forum. There is no information about how expenses claimed for fees and charges from the applicant's accountant or tax consultant relate directly to the claim here.

[8] The applicant originally sought a declaration on his employment status in order to resolve tax and immigration issues. A declaration was made and to that extent he was the successful party. However, having considered all the circumstances of this case, I find that an award of costs to either party is not warranted. **I order that costs, if any, lie where they fall.**

Robin Arthur
Member of Employment Relations Authority