IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 204A/10
5164147

	BETWEEN	BARBARA WHITNEY AND OTHERS Applicants
	AND	NEW ZEALAND POST LIMITED Respondent

Member of Authority:	Yvonne Oldfield
Representatives:	Paul Blair for Applicants Penny Swarbrick for Respondent
Submissions received:	1 June 2010 from Applicant 31 May 2010 from Respondent
Determination:	30 July 2010

COSTS DETERMINATION OF THE AUTHORITY

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[1] This employment relationship problem concerned a dispute about the effect of certain provisions of the Collective Employment Agreement between New Zealand Post and the Postal Workers Union of Aotearoa (the Union.) The Respondent's interpretation of the provisions at issue was found to be correct, as set out in the determination dated 3 May 2010.

[2] On the basis that costs follow the event, the Respondent now seeks a contribution of $4,500.00 to the costs incurred in defending the matter (which it says were "*in excess of $12,000.00*".) The Respondent says these costs were reasonable especially given the breadth of the Applicants' original claims, the need for opening statements, and the need to revise submissions when the issue for determination was amended and clarified at hearing.

[3] The Applicants argues that this is a case where costs should lie where they fall, saying that costs need not always follow the event and the Authority has a wide discretion when considering costs. It submits that:

"The Postal Workers Union of Aotearoa was one of the Applicants and had little option other than to challenge a significant change in the interpretation, application and operation of the CEA for a significant section of its membership and potential membership."

[4] It was also noted for the Applicants that the Union utilised an employment advocate rather than formally engaging legal counsel, and suggested that the Respondent could have engaged competent senior management as its advocate in the Employment Relations Authority. In the Applicants' submission, if costs were not to lie where they fall, then no more than $1,000.00 as an award of costs could be justified in this case.

[5] Finally it was suggested that since the Applicants had challenged the Authority's decision and since the matter was, in their view "finely balanced" it would be appropriate for the Authority to defer costs until the outcome of the challenge was known.

Determination

[6] It must be acknowledged that disputes about the interpretation of collective agreements are a type of employment relationship problem where it may be appropriate for costs to lie where they fall. This is most likely to be the case where it is in the interests of both parties to establish the effect of provisions that are perhaps unclear or ambiguous.

[7] However I am not persuaded that this is such a case, principally because I do not share the view that the case was finely balanced. The Respondent's understanding of the effect of the relevant provisions was supported by a plain language approach to the words of the agreement.

[8] For this reason, I am satisfied that a contribution to costs is appropriate. However, I also accept that this should be modest. Although the quality of the Respondent's submissions amply demonstrated the basis for the costs incurred, it remains that the questions before the Authority were relatively straightforward (even before being clarified and amended at the investigation meeting.) Close and careful attention to the text of the agreement was what was needed to determine this case, not lengthy legal argument.

[9] I note also that the investigation meeting took well under a day.

[10] **I therefore order that the Applicants make a contribution of $1,500.00 to the Respondent's costs.**

Yvonne Oldfield
Member of the Employment Relations Authority