

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 163/10  
5306548

BETWEEN                      SHAUN WILLIAMS  
   Applicant  
  
A N D                              SBL GROUP LIMITED  
   Respondent

Member of Authority:    Helen Doyle  
  
Representatives:         Steven Zindel, Counsel for Applicant  
   Maree Kirk, Counsel for Respondent  
  
Teleconference:         16 August 2010  
  
Submissions Received:   13 August 2010 from the Respondent  
  
Determination:         19 August 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] Shaun Williams lodged an employment relationship problem with the Authority that he was unjustifiably dismissed. One of the remedies he sought was reinstatement. Mediation took place between the parties. It did not resolve the matter and a telephone conference with the Authority took place with Mr Williams and Ms Kirk on behalf of the respondent attending on 2 August 2010.

[2] It was agreed during the telephone conference that the Authority would conduct an investigation meeting in Nelson on 14 October 2010. There were some other issues discussed and recorded in a Notice of Direction dated 2 August 2010.

[3] Following the telephone conference on 2 August 2010, the Authority received an affidavit from Mr Williams in support of an application for interim reinstatement and an undertaking as to damages. A support officer of the Authority duly confirmed with Ms Kirk that she had been served with Mr Williams' affidavit and undertaking and requested in a letter dated 3 August 2010 that a statement in reply should be lodged and served within an abridged time of five days following which there would be a further telephone conference held with the Authority.

[4] On 6 August 2010, Ms Kirk then advised the Authority that she was intending to file a notice of opposition and two affidavits in support of that notice.

[5] On 9 August 2010, the Authority received an email that had been copied to Ms Kirk from Mr Zindel who advised that he was now representing Mr Williams. Mr Zindel in his email said that he was in the process of applying for legal aid. Mr Zindel advised that, following discussions with his client, the application for interim reinstatement was to be withdrawn. Mr Zindel suggested that costs at that stage be reserved.

[6] Ms Kirk, by email sent to the Authority and copied to Mr Zindel on 11 August, confirmed that there was no objection to the Authority granting the application to withdraw the interim reinstatement application but objecting to costs being reserved and asking that costs be dealt with in relation to the application. In support of that, Ms Kirk also lodged submissions as to costs.

[7] The Authority accepts the withdrawal of the application for interim reinstatement leaving at large the question of costs.

[8] The Authority asked the support officer to set up a further telephone conference with Mr Zindel and Ms Kirk because there were several matters that the Authority wished to discuss with the parties, including that of costs in relation to the interim application.

[9] I heard from both Mr Zindel and Ms Kirk with respect to costs and advised them that I would determine whether costs, in relation to the interim matter, should be determined or whether it would be more appropriate to reserve them until after the substantive matter had been finally determined.

### **Determination**

[10] Ms Kirk, in her written submissions for costs, sets out the steps taken by the respondent in terms of the application for interim reinstatement and further submits that the power of the Authority to order costs is discretionary and that there is nothing to prevent the Authority from making an order in relation to interim matters.

[11] Mr Zindel, in his submission, refers to the judgment of the Full Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808 and the emphasis in

that judgment on the role of the Authority of resolving employment relationship problems without regard to technicality.

[12] Mr Zindel also referred the Authority to the comments made by the current Chief Judge Colgan in *NZ Automobile Association Inc v. McKay* [1996] 2 ERNZ 622 that it would normally be appropriate for the Employment Tribunal to reserve costs until the completion of the substantive litigation where costs were sought for an interlocutory application.

[13] I have had particular regard to the judgment in *McKay*. There is still before the Authority a substantive matter for investigation in October. In *McKay*, it was observed that there was not a hard and fast rule that it was inappropriate to order costs against an interlocutory application which results in the survival of the substantive proceedings. In my view what is persuasive is the observation in *McKay* that it may be more just, in cases brought to a low level, speedy and informal tribunal, where merits were not being considered to determine the costs as part of the overall settlement of the grievance rather than at an interlocutory stage.

[14] My view is that whilst there may be occasions when it is appropriate to determine on the withdrawal of an application the issue of costs, I am not so satisfied that this is such a case.

[15] I have reached this conclusion taking into account the role of the Authority, the fact that there is still before the Authority a substantive matter to be investigated and concluded, including an application for permanent reinstatement, and there is also the potential that legal aid could impact in terms of any award although, as at this stage, it seems a final outcome in terms of the legal aid application is not known.

[16] I therefore reserve the issue of costs to be dealt with after the substantive matter has been determined. Ms Kirk's submissions will be kept on file for that purpose. Mr Zindel will have an opportunity to make further submissions with regard to that matter at a later time.

Helen Doyle  
Member of the Employment Relations Authority