

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2010] NZEMPC 122
ARC 97/09**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for costs

BETWEEN SERVICE & FOOD WORKERS
UNION NGA RINGA TOTA INC
Plaintiff

AND OCS LIMITED
Defendant

Hearing: By memoranda of submissions filed on 16 August and 7 September
2010

Judgment: 13 September 2010

COSTS JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] Should the plaintiff have a contribution to its legal costs from the defendant and, if so, how much?

[2] Although the defendant was successful in the Employment Relations Authority and it did not make any order, costs in that forum are at large again because of the plaintiff's success on the challenge.

[3] The union's costs in both forums total \$8,787.50 and it seeks an award of \$6,000, being approximately two-thirds of that amount.

[4] Mr Mitchell for the plaintiff acknowledges that cases determining disputed interpretations of collective agreements are not subject to the same costs' principles as cases essentially between a particular employer and a particular employee: see *Maritime Union of New Zealand Inc v TLNZ (Auckland) Ltd.*¹

[5] Mr Mitchell submits that this was not a case in which either party has obtained a wider benefit from the interpretation of a difficult or ambiguous collective interpretation. Counsel submits that the Authority was clearly wrong, having been misled by evidence adduced for the defendant in that forum.

[6] The defendant opposes both the making of an order generally and the particular order sought by the plaintiff. First, it says through counsel that the claim for \$6,000 (inclusive of GST) is mis-stated because the plaintiff is an incorporated society which can recover GST expended so that any award should be GST exclusive and, in relation to the \$6,000 claimed, limited to \$533.

[7] Mr McBride, counsel for the defendant, says that the Court's previous practice in other similar proceedings between these parties should be followed and costs left to lie where they fell. Mr McBride submits that both parties had tenable positions and arguments.

[8] I accept that the legal costs incurred by the union are reasonable in all the circumstances. It is therefore a question of what is a reasonable contribution to those reasonable costs. Because of the dispute/interpretation elements referred to above, I consider that less than a notional two-thirds starting point should be applied. It is important that neither unions nor employer should be discouraged from seeking the assistance of the Authority and the Court to resolve matters that are genuinely in dispute between them.

¹ AC 7/08, 10 April 2008.

[9] In these circumstances I consider that a global (that is Authority and Court) award in favour of the plaintiff against the defendant of \$4,000 is warranted and I so direct.

GL Colgan
Chief Judge

Judgment signed at 1 pm on Monday 13 September 2010