

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2010] NZEMPC 31  
ARC 73/08**

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

AND IN THE MATTER OF an application for costs

BETWEEN CARL JAMES PETERSON  
First Plaintiff

AND KARL JACOB PETERSON  
Second Plaintiff

AND P & B ENGINEERING LIMITED  
First Defendant

AND PETERSON GLOBAL SALES  
LIMITED  
Second Defendant

Hearing: by memoranda of submissions filed on 18 December 2009 and 18  
January 2010

Judgment: 29 March 2010

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**COSTS JUDGMENT OF CHIEF JUDGE GL COLGAN**

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[1] In a memorandum notable for its brevity, Carl Peterson, for himself and on behalf of Karl (Jake) Peterson, the second plaintiff, seeks \$11,371.25 for the costs to them of the proceeding in the Employment Relations Authority and, on a challenge, in this Court.

[2] The first defendant (P & B Engineering Limited) has subsequently gone into liquidation and the liquidator does not intend to take any further part in this proceeding. Without the liquidator's consent, no order can be made against the first

defendant. Any order for costs would have been made against the defendants jointly and severally so that the same order can now be made against the second defendant alone.

[3] The first component of the plaintiffs' claim relates to the services of a firm of barristers and solicitors said to have been engaged for the plaintiffs to prepare for, and represent them at, what is described as a "hearing" of the "Employment Tribunal" but could only have been an investigation meeting of the Employment Relations Authority in February 2008. This claim is for \$9,336.25. Filed on 25 January 2010 is a copy of a solicitors' bill of costs for this amount.

[4] The usual costs of representation in the Employment Relations Authority allowed for in a case of this sort is between \$3,000 and \$3,500 per day and I propose to allow a total of \$7,000 to the plaintiffs for their costs of representation for two days in the Employment Relations Authority.

[5] The next head of claims advanced by the plaintiffs is for "minor misc. disbursements". I do not allow the cost of an ink cartridge for a printer but accept that some miscellaneous disbursements should be compensated for which I fix in the sum of \$200.

[6] Next, the plaintiffs re-claim the court filing fees of \$200 which are allowed.

[7] Finally, Mr Peterson claims mileage at the rate of \$1.20 per kilometre (said to be "public services rate") for travel to Hamilton for mediations, from Mamaku to Rotorua on a number of occasions and to Tauranga and Auckland for hearings. The total kilometres travelled are said to be 2,100.

[8] The amount claimed as equivalent to "public service" amounts is excessive. Judges, for example, are entitled to claim only about half of that amount per kilometre and I am not aware of any mileage reimbursement even approaching \$1.20 per kilometre in the public service. I do not propose to allow travel expenses in any event. Any litigant must necessarily incur some cost of attending a hearing and such costs are not normally allowed for.

[9] The defendants oppose the making of these orders. The opposition, however, is based substantially, if not entirely, upon an attempt to re-litigate the case on the basis that this Court's judgment was wrong. The defendants' application for leave to appeal to the Court of Appeal has been dismissed and their avenues of further challenge are therefore closed. An appeal cannot proceed under the guise of the opposition to an order of costs, let alone a counterclaim for costs as the defendants have sought.

[10] Further, the time has now passed for the plaintiffs to formulate their claims for damages and they have indicated to the Registrar that they do not now intend doing so, relying only on a judgment for costs in their favour.

[11] It follows that the plaintiffs are entitled to a contribution by the second defendant to their legal costs of \$7,000 and to disbursements of \$400. I so order.

GL Colgan  
Chief Judge

Judgment signed at 2 pm on Monday 29 March 2010