

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2010] NZEMPC 65
ARC 55/09**

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

AND IN THE MATTER OF an application for costs

BETWEEN JOHN FRASER
 Plaintiff

AND CHIEF EXECUTIVE OF THE
 DEPARTMENT OF CORRECTIONS
 Defendant

Hearing: By memoranda of submissions filed on 30 April and 20 May 2010

Judgment: 24 May 2010

COSTS JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] The plaintiff discontinued this challenge to the determination of the Employment Relations Authority¹ following a call-over of the case at which his counsel advised the Court of his intention to discontinue.

[2] The defendant seeks a contribution to his costs for preparing and filing his statement of defence and attendances at telephone conference calls with the Court. The defendant's costs for these attendances are said to have been \$5,000 (excluding GST) for filing his statement of defence, preparation for and attendance at a telephone conference call, and responding to memoranda filed by the plaintiff's counsel. The defendant seeks a contribution of two-thirds of this sum.

¹ AA225/09, 8 July 2009.

[3] The plaintiff says that he withdrew his claim as soon as he was advised by his union that it would not fund his challenge. His circumstances are that he receives a sickness benefit leaving him with about \$130 per week after living expenses. The plaintiff says that he is “able and willing” to pay costs of \$500. The plaintiff describes the amount of the defendant’s costs claimed as “staggering”.

[4] I must say that I agree with the sentiment, if not the description of that amount. The same solicitors acted for the defendant in the Employment Relations Authority so were well aware of the relevant facts of the case including the defence. The statement of defence filed is appropriately succinct, runs to three pages, and consists principally of admissions and denials with a little, but not much, further detail. The telephone conference calls were brief and there was nothing complex or difficult in the memoranda filed by the plaintiff’s counsel. The sum of \$5,000 (excluding GST) is not, in my view, a reasonable fee for those attendances. I would consider that between \$1,000 and \$1,500 at most would have been a reasonable fee for those attendances.

[5] In the plaintiff’s circumstances, as outlined by him, his offer to pay \$500 towards costs is realistic and I award that sum in favour of the defendant.

GL Colgan
Chief Judge

Judgment signed at 2 pm on Monday 24 May 2010