

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2010] NZEMPC 69  
ARC 91/09**

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

AND IN THE MATTER OF an application for costs

BETWEEN                        WILSON MINHINNICK  
   Plaintiff

AND                                NEW ZEALAND STEEL LIMITED  
   Defendant

Hearing:            By memoranda from counsel filed on 9 April and 12 May 2010

Judgment:        27 May 2010

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**COSTS JUDGMENT OF JUDGE M E PERKINS**

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[1] Mr Minhinnick commenced a challenge in this Court against the determination of the Employment Relations Authority (the Authority) dated 13 October 2009. In that determination Mr Minhinnick's dismissal from employment with New Zealand Steel Limited was found to be justified. In a judgment delivered by me on 29 March 2010 I made similar findings to the Authority and accordingly the challenge failed. In my judgment I confirmed the award of costs of \$1,000 made by the Authority Member on 3 December 2009 against Mr Minhinnick. I reserved the issue of costs in respect of the Court proceedings pending receipt of memoranda from counsel. Such memoranda have now been received.

[2] I am referred to the principal authorities dealing with the award of costs in this Court<sup>1</sup>. The starting point is two thirds of the cost actually and reasonably incurred by the successful party. However, the matter is one of discretion and obviously the financial circumstances of the unsuccessful party against whom an award of costs is sought needs to be taken into account.

[3] In his submissions, Mr Skelton has indicated that the actual costs incurred by the defendant amounted to \$17,000. Two thirds of that sum is \$11,220. Mention is made of a sum of money paid to Mr Minhinnick by the New Zealand Steel superannuation provider. Mr Wicks in his memorandum of behalf of Mr Minhinnick indicates that the sum received by Mr Minhinnick was substantially less than that specified in Mr Skelton's submissions. In addition, Mr Minhinnick has commitments to a disabled daughter. He and his wife have made substantial borrowings against the equity in their family home in order to modify it to enable them to care for their daughter. Mr Wicks makes the submission that Mr Minhinnick and his wife will suffer significant hardship if they are forced to sell the property. Nevertheless, Mr Wicks does accept that costs should follow the event in the usual fashion but that the particular personal and financial circumstances of Mr Minhinnick need to be taken into account.

[4] In order to substantiate the submissions made by his counsel, Mr Minhinnick has sworn and filed an affidavit setting out his present financial circumstances. He has verified the assertions in his affidavit by annexing documents, which confirm his level of indebtedness and also the sum of money, which he received from the superannuation provider.

[5] I accept that any award of costs is going to simply add to Mr Minhinnick's indebtedness. He now has employment, which enables him to supplement the income his wife also earns.

[6] In the circumstances it is appropriate that an award of costs be made in favour of the defendant. However, having regard to the financial position of

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<sup>1</sup> *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305; *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438; *Health Waikato Ltd v Elmsly* [2004] 1 ERNZ 172.

Mr Minhinnick I propose to depart from the usual principle of awarding two thirds of the costs actually and reasonably incurred by the defendant. There is no suggestion from Mr Wicks that the sum of \$17,000 indicated in Mr Skelton's submissions are other than fair and reasonable. The figure of \$17,000 mentioned has been substantially discounted by removal of any costs incurred in respect of having second counsel appear with Mr Skelton. That is a reasonable stand for the defendant to take in the matter.

[7] The issue is totally one within the Court's discretion. I consider that in exercise of that discretion a reasonable sum for Mr Minhinnick to contribute towards the costs of the defendant is \$8,000 and there will be an award of costs against him in favour of the defendant in that sum. In addition, the defendant is entitled to reimbursement by Mr Minhinnick of disbursements reasonably incurred by the defendant in defending the challenge.

**M E Perkins  
JUDGE**

Judgment signed at 12.15pm on 27 May 2010