



to proceed and the defendant had arranged witnesses to attend from Fiji and Australia to give evidence. The matter was adjourned and costs were reserved.

[4] The matter was finally heard on 26 April 2010. By that stage the parties had produced an agreed statement of facts which avoided the need for the two witnesses attending from overseas.

[5] The issue in the case was how particular employees should be paid for public holidays over the Christmas/New Year period when the enterprise in which they worked had been shut down.

[6] It gave rise to issues under the Holidays Act 2003. There was little direct guidance from previous authorities on the issue and, in the event, the defendant's submissions were accepted.

[7] The costs incurred by the defendant appear somewhat on the high side for a fixture which took two hours. Mr France, counsel for the defendant, cited an example of a case where the Court had awarded \$3,000 in costs for a two hour fixture: *NZ Tramway IUOW v Cityline (NZ) Ltd and ors.*<sup>1</sup>

[8] Ms McNally for the plaintiff submitted that there was an agreed statement of facts and a notable lack of complexity in the matter as it was finally presented. She also invited the court to conclude that the disputed issue was about the application of the Holidays Act to the collective agreement and was therefore in the nature of a test case and that the proper course was for costs to lie where they fell. She accepted that there could be some recognition of the initial adjournment of the proceedings and the costs of bringing witnesses to New Zealand for that adjourned fixture. She submitted that any award of costs should be at the lower end of the scale.

[9] I accept the thrust of Ms McNally's submissions and consider that there was a test case aspect to these proceedings. I also consider the costs incurred were high for a two hour fixture. However, through no fault of its own, the defendant was put to additional expense as a result of the abandoned fixture, and I agree with Ms

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<sup>1</sup> WC 23/07, 30 November 2007.

McInally that this should be acknowledged by an award of costs at the lower end of the scale.

[10] In all the circumstances, I consider that the award in the *Tramways Union* case does provide a reasonable guideline and order the plaintiff to pay to the defendant, as a contribution towards the plaintiff's costs, the sum of \$3,000.

B S Travis  
Judge

Judgment signed at 3.15 pm on Thursday 26 May 2011