

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2012] NZEmpC 122
ARC 1/12**

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

AND IN THE MATTER OF an application for costs

BETWEEN PACIFIC FLIGHT CATERING
LIMITED
First Plaintiff

AND PRI FLIGHT CATERING
Second Plaintiff

AND SERVICE & FOOD WORKERS'
UNION NGA RINGA TOTA INC
First Defendant

AND VA'A NGAKAU
Second Defendant

AND SONNY TUITI
Third Defendant

AND KEVIN MEHANA
Fourth Defendant

AND SALA PARKER
Fifth Defendant

Hearing: By written submissions filed on 26 June and 12 July 2012

Appearances: Anthony Drake and Rosemary Childs, counsel for plaintiffs
Tim Oldfield, counsel for defendant

Judgment: 26 July 2012

COSTS JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] The first defendant (which sustained the cost of representation of all defendants) seeks an order for contribution to its costs from the plaintiffs. Pacific Flight Catering Limited (PFCL) opposes the making of any order and says that costs should lie where they fall.

[2] Except for one preliminary point brought by cross challenge, the defendants were successful in resisting the plaintiffs' challenge and in upholding the Authority's determination.

[3] As the defendants have pointed out, at [36] of the primary judgment¹ the Court was sufficiently unimpressed with one of PFCL's grounds of challenge that it said that its dismissal would sound in costs.

[4] Not only in this respect but overall, the plaintiffs' challenge was weak and I disagree with their counsel's assertion that their claims had merit and were properly brought before the Employment Court. Taking account of the costs associated with the defendants' unsuccessful cross challenge, I conclude that they are nevertheless entitled to a contribution to their reasonable costs.

[5] There can really be no argument about the reasonableness of the defendants' costs. They were represented by the first defendant's in-house lawyer who has calculated a notional hourly charge-out rate of \$65. Although there was no hearing as such, the proceedings having been determined on written submissions filed, I accept that appropriate preparation time was committed to these. The defendants' claim for costs of \$2,236 would represent an indemnity award and, although it is very reasonable in all the circumstances, I consider that there should be a discount to reflect the plaintiffs' success on the preliminary point and successful defence to cross challenge.

¹ [2012] NZEmpC 61.

[6] In these circumstances, there will be an award of costs in favour of the defendants against the plaintiffs in the sum of \$2,000.

GL Colgan
Chief Judge

Judgment signed at 2 pm on Thursday 26 July 2012