

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2012] NZEmpC 89  
ARC 30/11**

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

AND IN THE MATTER OF an application for costs

BETWEEN                                      WAYNE DESMOND MUNRO  
Plaintiff

AND    NS SECURITY LIMITED, FORMERLY  
KNOWN AS HIBISCUS COAST  
SECURITY LIMITED  
Defendant

Hearing:                      By memoranda of submissions filed on 30 March and 2 May 2012

Counsel:                      Barry Hayes, counsel for plaintiff  
No appearance for the defendant

Judgment:                      11 June 2012

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**JUDGMENT OF JUDGE CHRISTINA INGLIS  
IN RELATION TO COSTS**

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[1]     The plaintiff was successful in his challenge<sup>1</sup> to the determination of the Employment Relations Authority. The parties were invited to agree costs if possible, but if they were unable to do so, to make written submissions. Submissions and supporting material have been filed on behalf of the plaintiff. The defendant chose not to defend the challenge. No submissions have been filed by the defendant in relation to costs.

[2]     The general principles guiding the Court's discretion to award costs are well known. The usual starting point for assessing costs in the Employment Court in ordinary cases is 66 percent of the actual and reasonable costs incurred.<sup>2</sup> That starting point may be adjusted up or down to reflect any effect on costs resulting

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<sup>1</sup> [2012] NZEmpC 38.

<sup>2</sup> See, for example, *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA) at [14].

from the manner in which the parties conducted their cases. The ability to pay is also relevant.

[3] The plaintiff was in receipt of legal aid. Judge Couch considered the application of the principles relating to costs in the context of a legally aided plaintiff in *Reynolds v Burgess*.<sup>3</sup> As he observed, although the costs of representation of the plaintiff were paid by the Legal Services Agency, it is proper to regard them as having been incurred by the plaintiff for the purposes of making an award of costs.<sup>4</sup>

[4] I am satisfied that the actual costs incurred in these proceedings amounted to \$9,527.82. This figure is derived from the invoices provided to the Legal Services Agency, and which set out (in detail) the attendances associated with pursuing the challenge before the Court and which include the filing fee (of \$204.44).

[5] I accept that costs and disbursements of \$9,527.82 were reasonably incurred by the plaintiff, having regard to the nature of the proceeding, the scope of the evidence, the preparation required for the hearing, and the hearing time involved. I accordingly adopt a starting point of \$6150.00 being approximately 66% of the total costs less the filing fee.

[6] I am unable to discern any basis for departing from the two thirds starting point urged on me by counsel for the plaintiff on the basis of the material before the Court (including the paucity of information as to the defendant's financial position, which might otherwise have been a relevant factor).

[7] Accordingly, I award costs and disbursements to the plaintiff of \$6354.44 in total, being \$6150.00 for legal costs and \$204.44 for disbursements.

Christina Inglis  
Judge

Judgment signed at 3pm on 11 June 2012

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<sup>3</sup> CC 5A/07, 4 July 2007.

<sup>4</sup> At [7]-[8].