

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2013] NZEmpC 115
ARC 38/12**

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

AND IN THE MATTER of an application for costs

BETWEEN ALLAN WEBB
 Plaintiff

AND SAPPHIRE HOSE
 Defendant

Hearing: By memoranda of submissions filed by the defendant on
 19 June 2013 and received at Court for the plaintiff on
 11 June 2013

Appearances: Garth O'Brien, counsel for plaintiff
 Hamish Burdon, advocate for defendant

Judgment: 26 June 2013

COSTS JUDGMENT OF JUDGE M E PERKINS

[1] In my judgment of 28 May 2013¹ I reserved the question of costs. If the parties could not agree on this question, they were to file memoranda. Regrettably no agreement could be reached and memoranda have now been filed and considered.

[2] The defendant was successful in defending the plaintiff's challenge to a determination of the Employment Relations Authority. That determination related to a costs award made by the Authority in respect of the investigation carried out by it.

[3] Costs normally follow the event and there is no basis to depart from that principle in this case. The principles applying to costs awards in this Court are well

¹ [2013] NZEmpC 92.

established from previous Court of Appeal decisions, one of which is referred to by both parties in their submissions in this case.²

[4] Relying upon attachment B to Mr Burdon's submission, the gross fees pre-GST charged to Ms Hose amount to \$3,495. The GST on that amount would be \$524.25 although GST is not normally included in any costs award. Mr O'Brien submitted that amount does not represent reasonable fees in the circumstances and is excessive. He has carried out a calculation by analogy with Schedule 3 of the High Court Rules to fortify his submission as to what would be fair and reasonable fees in this case. Based on that schedule and the fact that the challenge was decided on the papers, that calculation results in a total of \$2,444. Of course the effect of r 14.2(d) of the High Court Rules is that the daily recovery rate provided for in the schedules is already discounted by one third from the daily rate considered reasonable for the circumstances of the proceedings. Therefore by adding back one third, for the purposes of the calculation to be made by this Court, pursuant to the decisions earlier referred to, the total increases to \$3,666. This is a sum greater than the fees actually charged by Mr Burdon to Ms Hose.

[5] Nevertheless, the final award of costs is always a discretionary matter for the Court. Mr Burdon has helpfully provided a breakdown of his attendances on the matter. I must also take into account that this was only a challenge to the costs award of the Authority. It was dealt with on the basis of written submissions and without the requirement of an appearance in Court with evidence to be adduced. Substantially greater preparation and attendances would be required for that kind of procedure and therefore were avoided in this case.

[6] In exercising the discretion I also need to be mindful of the amount actually in dispute and ensure a sense of proportion.

[7] I have carefully considered the matter and exercised my discretion applying the principles to be adopted. In all the circumstances I consider an appropriate

² *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA); *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA); and *Health Waikato Ltd v Elmsly* [2004] 1 ERNZ 172 (CA).

award of party to party costs in this case is \$2,000. The plaintiff is ordered to pay this sum to the defendant. No disbursements have been claimed.

M E Perkins
Judge

Judgment signed at 9am on 26 June 2013