

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2013] NZEmpC 140  
ARC 77/12**

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

BETWEEN                      PAUL YOUNG  
   Plaintiff

AND                              THE BOARD OF TRUSTEES OF  
   AORERE COLLEGE  
   Defendant

Hearing:                      By submissions filed by the defendant on 17 July 2013 and by  
   the plaintiff on 18 July 2013

Appearances:                Gregory Bennett, advocate for plaintiff  
   Richard Harrison and Emily McWatt, counsel for defendant

Judgment:                    24 July 2013

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**COSTS JUDGMENT OF JUDGE CHRISTINA INGLIS**

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[1] In my substantive judgment of 18 June 2013,<sup>1</sup> I dismissed the plaintiff's challenge to the Employment Relations Authority's (the Authority's) determination.<sup>2</sup> Costs were reserved. I invited the parties to attempt to agree costs but they have been unable to do so and have filed memoranda.

[2] The principles relating to costs awards in this Court are well established.<sup>3</sup> Clause 19(1) of Schedule 3 to the Employment Relations Act 2000 confers a discretion as to costs. It provides that:

The court in any proceedings may order any party to pay to any other party such costs and expenses ... as the court thinks reasonable.

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<sup>1</sup> [2013] NZEmpC 111.

<sup>2</sup> [2012] NZERA Auckland 366.

<sup>3</sup> See *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA); *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA); *Health Waikato Ltd v Elmsly* [2004] 1 ERNZ 172 (CA).

[3] The Court's discretion when making costs awards must be exercised judicially and in accordance with recognised principles. The usual approach is that costs follow the event and generally amount to 66 percent of costs actually and reasonably incurred by the successful party (absent any factors that might otherwise warrant an increase or decrease from that starting point).

[4] The defendant seeks an award of \$6,000 by way of contribution to its legal costs, submitting that this amounts to 66 percent of the actual and reasonable costs incurred in responding to the plaintiff's challenge. Mr Harrison, counsel for the defendant, submits that there are no factors warranting a departure from the usual approach. Mr Bennett, on behalf of the plaintiff, has filed brief submissions noting that the plaintiff was entitled to challenge the Authority's determination and to test whether it was correct, that the proceeding was not complicated, and that any award of costs should be minimal.

[5] The defendant has incurred costs in this proceeding of \$9,130.95. These costs are reflected in three invoices before the Court. There are three charges that are said to relate to an "administration fee" (totalling \$229.95). Such costs are insufficiently particularised to enable an assessment to be made as to what they include, whether they were necessarily incurred, and whether they were reasonable. I accordingly put them to one side. Costs of \$45 associated with "typing services" are also included in the overall costs claimed by the defendant. I disallow these costs, which are generally absorbed into office overheads.<sup>4</sup>

[6] The legal issues raised by the challenge were not overly complex. However, a number of steps were required to respond to it, including the preparation and filing of a statement of defence, attendance at a telephone conference, the preparation and filing of affidavit evidence in support of the defendant's position on the challenge, and preparation of submissions, including legal research. I accept, having regard to the nature of the proceedings and what was involved in responding to them, that costs of \$8,856 were within the reasonable range.

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<sup>4</sup> *New Zealand Professional Firefighters Union v New Zealand Fire Service Commission* WC9A/08, 3 October 2008 at [31].

[7] While I accept Mr Bennett's submission that the plaintiff was entitled to challenge the Authority's determination that is not, in itself, a discounting factor in terms of costs. Nor is there any other identifiable factor that would otherwise suggest that a decrease in costs might otherwise be warranted.

[8] In the circumstances, I am satisfied that an appropriate contribution to the defendant's costs is \$5,840. Accordingly the plaintiff is ordered to pay the defendant the sum of \$5,840.

Christina Inglis  
Judge

Judgment signed at 3.30 pm on 24 July 2013