

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**AC 32A/07  
ARC 35/06**

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

AND IN THE MATTER OF an application for costs

BETWEEN                      TERENCE PAUL GOLDEN  
Plaintiff

AND                              NORTHLAND DISTRICT HEALTH  
BOARD  
Defendant

Hearing:            By memorandum received from the defendant on 15 June 2007

Judgment:        19 June 2007

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**COSTS JUDGMENT OF JUDGE M E PERKINS**

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[1]        Further to my judgment of 1 June 2007 dealing with the challenge and cross-challenge filed in this matter, I have now received a memorandum from counsel for the defendant in relation to costs.

[2]        As set out in my earlier judgment, Mr Golden has effectively taken no part in the matter. He is not now entitled to be heard on the issue of costs.

[3]        The effect of my earlier judgment is that the cross-challenge by the defendant has been upheld and the challenge by Mr Golden to the determination of the Employment Relations Authority has been dismissed. The effect is that the Authority's determination has been set aside.

[4] Mr Dench, counsel for the defendant, seeks costs in respect of the investigation carried out by the Authority leading to its determination and costs in respect of the proceedings filed in the Court.

[5] Insofar as costs in the Authority are concerned the practice there is that costs are awarded for sums ranging between \$1,000 and \$3,000 per hearing day. In this particular case the hearing before the Authority took one day. Following the determination I am informed by Mr Dench that the parties reached agreement that costs would be settled at \$2,250. That was, of course, a sum agreed in favour of Mr Golden. It has been paid to him by the defendant. As a result of my judgment, Mr Golden has been ordered to repay those costs along with other monies already paid by the defendant to him.

[6] It seems appropriate and I agree with Mr Dench's submission, that in respect of costs in the Authority that the plaintiff should now be ordered to pay the same sum of costs to the defendant. Accordingly there will be an order in respect of costs in the Authority, in the sum of \$2,250 against the plaintiff.

[7] Insofar as the costs in the Court are concerned, the defendant has incurred quite substantial costs. Even though Mr Golden failed to take adequate steps to further his challenge and be represented, it was necessary for a hearing to be conducted so that the Court could deal with the defendant's cross-challenge. That meant a hearing involving three witnesses giving evidence on behalf of the defendant at a hearing lasting approximately one half day.

[8] In my judgment I mentioned the difficulties in having Mr Golden notify an address for service in New Zealand and the attempts made to procure his participation in the proceedings. Those matters necessarily involved the defendant in added costs.

[9] Mr Dench submits that by application of the usual principle applying in this Court, the defendant should receive an award of costs, which represents two thirds of its actual costs reasonably incurred. Mr Dench refers to *PBO Ltd v Da Cruz (formerly Rush Security Ltd)* [2005] 1 ERNZ 808.

[10] Mr Dench has attached to his submissions information disclosing that the defendant has incurred quite substantial fees in respect of the proceedings. However, having considered the invoices I am of a view that the costs, which have been charged are reasonable. Mr Dench indicates that the defendant claims \$15,000 as a contribution towards its total costs in the matter. This represents a sum equating to approximately half of the actual fees incurred by the defendant. I consider that reasonable. Accordingly, the plaintiff will be ordered to pay the sum of \$15,000 in respect of the proceedings before the Employment Court.

[11] In total therefore the costs awarded against the plaintiff in respect of both the Authority and Court proceedings is \$17,250.

M E Perkins  
Judge

Judgment signed at 11.45am on Tuesday, 19 June 2007