

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC 31/07
ARC 49/05**

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

AND IN THE MATTER OF an application for costs

BETWEEN BANTWAL SRINIVAS PRADEEP
 Plaintiff

AND STAR MART SERVICE STATION
 LIMITED
 Defendant

Hearing: Written submissions received 11 January 2006

Judgment: 1 June 2007

COSTS JUDGMENT OF JUDGE C M SHAW

[1] The defendant seeks an award of costs following the dismissal of the plaintiff's challenge.

Background

[2] On 27 May 2005 the Employment Relations Authority found that although Mr Pradeep had been unjustifiably dismissed by Star Service Stations Ltd it would not be practicable for him to be reinstated. It ordered that he be reimbursed for lost remuneration and awarded \$2,500 in compensation. It reserved the question of costs.

[3] Although his claim had been largely successful, Mr Pradeep, acting for himself, challenged the determination. In his challenge he sought reinstatement, an award of costs, compensation, and damages. Star Service filed a statement of

defence. In August 2005, Mr Pradeep sought an early hearing date and was advised by the Registrar on 26 August 2005 that the challenge would be heard on 3 November 2005. The notice of hearing said *“If the plaintiff does not attend the hearing, the proceedings may be dismissed and the Court may award costs against the plaintiff.”*

[4] In preparation for the hearing, Star Service obtained three witness summonses, drafted witness statements, and prepared the defendant’s bundle of documents. Mr Pradeep failed to meet his obligations to provide a common bundle.

[5] On 20 October 2005 Mr Pradeep filed the submissions he wished to make in connection with his case and on 27 October 2005 Star Service’s lawyers filed an amended statement of defence along with three briefs of evidence.

[6] On 3 November, Mr Pradeep filed his brief of evidence to the Court but failed to appear for the hearing. Counsel for the defendant applied to have his challenge dismissed. This was granted. In the judgment recording this I noted that if Mr Pradeep wished to proceed again he would have to make an application to the Court.¹ Costs were reserved to enable counsel for Star Services to give the Court details about disbursements.

[7] Mr Pradeep wrote to the Court on 17 November 2005 apologising for his failure to appear on 3 November 2005 citing medical reasons and advising that he would be filing his appeal papers *“by Monday”*. However, he has not taken any further steps.

[8] I am advised by the Registrar that the costs application was sent to Mr Pradeep’s last known address for service but was returned with address unknown.

Application for costs

[9] Mr Cook advised the Court in his costs memorandum that upon receipt of the plaintiff’s statement of claim a Calderbank offer was made on behalf of the

¹ *Pradeep v Star Service Stations Ltd*, unreported, Shaw J, 3 November 2005, AC67/05

defendant. It was dated 14 July 2005 and offered Mr Pradeep \$2,500 compensation for injury to feelings, \$1,890 reimbursement of wages, and \$200 for additional costs claimed.

[10] Apart from the \$200, this was an offer of what had been ordered by the Authority on the basis that even if his challenge were successful he would be unlikely to be reinstated and his compensation would be modest. No response was received from Mr Pradeep to that letter.

Costs application

[11] In support of the defendant's application for Mr Pradeep to make a reasonable contribution to its costs, Mr Cook referred to the preparation undertaken on behalf of the defendant for the hearing which led to the defendant's total fees being \$10,836 plus GST and disbursements. This figure was supported by copies of the relevant accounts. Mr Cook submitted that the defendant had been put to some significant expense well beyond what it had been prepared to offer the plaintiff on 14 July 2005.

[12] I am satisfied that the defendant is entitled to a contribution to its costs given Mr Pradeep's failure to pursue his challenge and in the light of the Calderbank offer which was both reasonable and timely.

[13] I see no reason to depart from the usual method of calculating costs being two-thirds of actual and reasonable costs expended as well as disbursements.

[14] The plaintiff is ordered to pay the defendant the sum of \$7,224 plus GST. The plaintiff is also ordered to pay the defendant's disbursements of \$397.65 for witness costs and service fees.

**C M Shaw
JUDGE**

Judgment signed at 3.00pm on 1 June 2007