

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**AC 55A/06  
ARC 79/05**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs
BETWEEN	GEOFFREY MAURICE DOWNEY Plaintiff
AND	NEW ZEALAND GREYHOUND RACING ASSOCIATION INC Defendant

Court: Judge M E Perkins

Hearing: By submissions filed on 11 and 17 October 2006

Judgment: 17 October 2006

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**COSTS JUDGMENT OF JUDGE M E PERKINS**

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[1] At the conclusion of a decision delivered on 27 September 2006, I reserved the issue of costs to enable the parties to endeavour to resolve the matter amicably between themselves. This has not been possible and in accordance with my directions counsel have now filed memoranda on the costs issue.

[2] The successful defendant has argued that this is an appropriate case for the Court to order 75 percent of real and actual costs amounting to \$12,571.18. Accordingly the costs claimed on this basis would amount to \$9,428.38.

[3] The unsuccessful plaintiff argues that costs should not greatly exceed the award of \$1,000 granted by the Employment Relations Authority in respect of the investigation and decision issued by the Authority, which subsequently became the subject of the challenge.

[4] This is not a case which involved any great complexity. The legal principles in the area are now well established at the highest level. It is true that a decision in favour of the plaintiff might have had wider implications. However, I do not consider

that this is a case where normal principles applying on costs should be departed from.

[5] It is clear that it is a case where costs should follow the event. That is not disputed by counsel for Mr Downey.

[6] Where the parties embark upon proceedings of this kind and are unsuccessful, unless there are special circumstances, they must expect to make a reasonable contribution towards the real and actual expenses incurred by the other party.

[7] I do not accept the submission by Mr Menzies, counsel for the defendant, that this is an appropriate case for an award of 75 percent of real and actual expenses. The usual principles adopted by this Court will apply. Accordingly, costs are awarded in favour of the defendant on the basis of two thirds of the defendant's actual costs of \$12,571.18. That fee is not excessive for a case of this kind involving two days' hearing time with necessary preparation. Accordingly, the total costs award against the plaintiff is \$8,380.79.

M E Perkins  
Judge

Judgment signed at 3.45pm on Tuesday, 17 October 2006

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