

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC 59/06
ARC 84/05**

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

BETWEEN FREDERIC DEVELOPMENTS LIMITED
 Plaintiff

AND DANIEL PECH
 Defendant

Judgment: 25 October 2006

COSTS JUDGMENT OF JUDGE ME PERKINS

[1] This is a de novo challenge to a preliminary determination of the Employment Relations Authority dated 17 August 2005. It got off to a bad start in that the challenge was not filed within the time limitation prescribed and leave to file was necessary. Leave was granted. The plaintiff was ordered to pay costs of \$500. These have been paid to the defendant.

[2] In a minute dated 23 March 2005 His Honour Judge Travis (at a time when the costs award of \$500 had not been paid), following a callover conference, made timetabling directions. In anticipation of such directions being complied with, a fixture of two days was allocated for 29 and 30 May 2006.

[3] That fixture was adjourned, primarily as a result of the plaintiff's illness and hospitalisation. Further, His Honour Chief Judge Colgan, in a minute dated 26 May 2006, directed reimbursement of expenses incurred by the defendant in preparation for the trial. The Chief Judge also made an "unless" order in respect of non-compliance with Judge Travis's earlier timetabling directions.

[4] The directions and orders made by the Chief Judge were not complied with. The proceedings have been dismissed. The defendant has applied for costs. Counsel for the plaintiff has been unable to obtain instructions from his client. The person who has, throughout the proceedings, represented the company, Keith Wagner, its director, has been personally notified of the claim for costs. No steps have been taken.

[5] The defendant in these circumstances is entitled to costs. There is no reason why usual principles should not apply. Costs follow the event. The defendant should be reimbursed on the basis of two-thirds of reasonable and actual costs incurred.

[6] The total costs and expenses incurred by the defendant amount to \$2,855.40. I consider these reasonable having regard to the course of the proceedings to date. The plaintiff has already made a contribution to such costs and expenses of \$500. The balance remaining is \$2,355.40. Two-thirds of that amount is \$1,570.26.

[7] Accordingly, there will be an order that the plaintiff contribute the further sum of \$1,570.26 to the costs of the defendant.

ME Perkins
Judge

Judgment signed at 4 pm on Wednesday 25 October 2006

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