

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC 50A/06
ARC 41/06**

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

BETWEEN TUPOU TU'ITUPOU
Plaintiff

AND GUARDIAN HEALTHCARE
OPERATIONS LIMITED
Defendant

Hearing: By memoranda of submissions filed on 26 September, 9 and 18
October 2006

Judgment: 20 October 2006

COSTS JUDGMENT OF JUDGE ME PERKINS

[1] Minutes were issued by me on 27 September 2006 and 17 October 2006 and delivered to counsel. As indicated in my last minute of 17 October 2006, I expressed the view that an unsatisfactory position had arisen in respect of costs.

[2] While Ms Schaaf has chosen not to respond to my last minute, I have now received a further submission from the advocate for the defendant, which appears to clarify Ms Tu'itupou's present position in respect of her application for legal aid for the Employment Court proceedings. It appears that she is not in receipt of a grant of aid.

[3] I would have hoped that the exact position would have been placed before the Court by Ms Schaaf. While Ms Tu'itupou is not presently in receipt of a grant of aid, she has apparently applied for legal aid and the matter is yet to be considered by the Legal Services Agency.

[4] In view of the time, which has elapsed and particularly having regard to the nature of the proceedings themselves, I do not propose, nor do I consider it appropriate, to delay further an order in respect of costs.

[5] In this case there is no reason to depart from the usual principle that costs follow the event. Accordingly, the defendant is entitled to an order for costs against the plaintiff.

[6] I have considered the memoranda filed. I consider the application by the defendant for costs of \$10,000 to be unreasonable and excessive. This matter involved a challenge to the decision of the Employment Relations Authority that the proceedings had been filed outside the three year time limit for the commencement of proceedings. In addition there was an application to the Court, in the event the challenge was rejected, for leave to be granted to commence proceedings out of time. Ms Tu'itupou's challenge and application were unsuccessful. For proceedings of this type it is my view that the time expended by the legal advisers to the defendant has been excessive.

[7] My assessment is that a reasonable fee for a proceeding of this nature would be \$6,000. There are no special circumstances attaching to the litigation, which would enable the Court to depart from the usual principle applied by it of awarding two-thirds of actual, reasonable costs.

[8] Accordingly, there is an order that the plaintiff contribute the sum of \$4,000 by way of costs to the defendant. I am aware that Ms Tu'itupou is of limited means. No doubt she will be able to reach an accommodation with the defendant to pay this award by instalments. However, she will need to deal with such matters in a more timely fashion than she has done with this litigation to date.

[9] I can see no reason why it was necessary for the defendant to have counsel travel from Wellington to Auckland for the hearing. Accordingly, there will be no order for expenses for out of town counsel.

ME Perkins
Judge

Judgment signed at 2.45 pm on Friday 20 October 2006

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