

**IN THE EMPLOYMENT COURT  
WELLINGTON**

**[2014] NZEmpC 228  
WRC 12/14**

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

BETWEEN                      SAI SYSTEMS LIMITED  
   Plaintiff

AND                              GRAEME BIRD  
   Defendant

Hearing:                      (on the papers by memoranda filed on 2 and 12 December  
   2014)

Counsel:                      B Buckett, counsel for the plaintiff  
   T Kennedy, counsel for the defendant

Judgment:                      12 December 2014

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**INTERLOCUTORY JUDGMENT OF JUDGE A D FORD**

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[1]      On 22 September 2014, I issued a judgment<sup>1</sup> in this proceeding upholding a determination of the Employment Relations Authority (the Authority) dated 24 March 2014<sup>2</sup> in which it declined an application by the plaintiff to join another party as a defendant. Although the challenge was unsuccessful I reserved the issue of costs. The substantive employment issue is still before the Authority.

[2]      On 2 December 2014, Ms Kennedy, counsel for the defendant, filed a detailed application for costs in both the Authority and this Court in relation to the joinder application and she requested a timetabling order to enable submissions to be made in response and reply. Ms Kennedy advised that the investigation into the substantive matter in the Authority is part heard and is rescheduled to continue on 27 March (presumably 2015).

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<sup>1</sup> *Sai Systems Ltd v Bird* [2014] NZEmpC 177.

<sup>2</sup> *Bird v Sai Systems Ltd* [2014] NZERA Wellington 27.

[3] Ms Buckett, counsel for the plaintiff, has submitted that the costs issues should be held-over pending final determination of the substantive matter before the Authority. Ms Kennedy in response submitted that the issue of joinder was a discreet matter that had finally been determined by the Court and, as such, the plaintiff was entitled to have costs fixed and paid at this stage.

[4] Although no authority was cited on the issue and this Court has a discretion as to costs, the defendant's application is consistent with rr 14.2(a) and 14.8(1) of the High Court Rules which collectively provide that unless there are special reasons to the contrary, a successful party to an interlocutory matter can expect to have costs fixed and thereupon they become payable by the losing party.

[5] The timetabling order the plaintiff seeks would require all submissions to be filed prior to the Christmas vacation but Ms Buckett has advised that she will be unavailable between 15 December 2014 and 20 January 2015. In the circumstances, I consider that the suggested timetable is too onerous on the defendant. I also consider that as the substantive matter is still before the Authority, it is appropriate that any application for costs in relation to the Authority's determination on the interlocutory issue should be dealt with in that jurisdiction.

[6] I, therefore, order that Ms Buckett is to file her submissions in response on or before Friday, 23 January 2015 and Ms Kennedy is to file submissions in reply by 30 January 2015. I will then deal with the matter on the papers.

A D Ford  
Judge

Judgment signed at 3.45 pm on 12 December 2014