IN THE EMPLOYMENT COURT
CHRISTCHURCH EGISTRY

[2015] NZEmpC 11
CRC 17/12

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	LYTTELTON PORT COMPANY LIMITED Plaintiff
AND	THE RAIL AND MARITIME TRANSPORT UNION First Defendant
AND	KEIRAN BREWSTER, RICHARD CATTAWAY, STEWART GRAINGER, DARRYL HAINES, ALAN HEALY, RUSSELL RINGDAHL, DAVID VINEY and TIM LAWTON Second Defendants

Hearing:	on the papers; submissions received 20 December 2013 and 5 February 2014
Appearances:	Rob Towner, counsel for the plaintiff Geoff Davenport, counsel for the defendants
Judgment:	10 February 2015

COSTS JUDGMENT OF JUDGE A A COUCH

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[1] The substantive case before the Court involved the interpretation and application of a succession of collective agreements between the plaintiff (the Company) and the first defendant (the Union). The overall issue was whether the second defendants were covered by the most recent of those collective agreements.

[2] The Employment Relations Authority found in favour of the defendants. The Company challenged that determination on two grounds. I rejected the first ground[1]

[1] That the second defendants were not "cargo handlers" for the purposes of the collective agreement.

but allowed the challenge on the second ground.[2] I concluded my substantive judgment[3] by saying

> [40] Costs are reserved. My first inclination is that costs should lie where they fall. Although the Company was ultimately successful, its claim that the second defendants were not "Cargo Handlers" was never viable. The proceeding was also in the nature of a test case. That is not, however, a final view and I am open to persuasion. If the Company wishes to seek an order for costs, a memorandum should be filed and served within 20 working days after the date of this decision. The defendants will then have 15 working days in which to respond.

[3] The Company subsequently did seek an award of costs and memoranda were filed by counsel for all parties.

[4] In his memorandum, Mr Towner recorded that the actual costs incurred by the Company were $114,071.73. That figure was explained by detailed documentation and I do not doubt it. Relying on the general proposition that "costs should follow the event", Mr Towner submitted that the Company should receive an award of costs of $76,000, being approximately two thirds of the costs actually incurred and disbursements. He also submitted that a further $3,500 should be awarded in relation to the proceeding before the Authority.

[5] For the defendants, Mr Davenport made two submissions. Firstly, he submitted that this proceeding was in the nature of a test case and that no award of costs should be made. In the alternative, he submitted that the costs actually incurred by the Company exceeded what was reasonable and that any award should be reduced accordingly.

[6] I have decided that no award of costs should be made. That is for two reasons. The first and most fundamental reason is that this was a "test case". The Company and the Union have a very longstanding relationship reflected in successive collective agreements which cover many hundreds of the Company's employees. The existence of those agreements and the proper application of them have been vital to the effective operation of the Company's business and the welfare of the Union's members.

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[2] That the second defendants were not employed "at the Port of Lyttelton".
[3] [2013] NZEmpC 224.

[7] This case raised an important question about the scope of the coverage clause of the applicable collective agreement. Evidence was given that the potential consequences of the case for the Company were great, both in monetary terms and in the organisation of its business. Equally, the second defendants stood to gain substantial benefits if the claim made on their behalf by the Union was successful. There was also the prospect that, had the claim been successful, other employees of the Company at the CityDepot could have become involved by joining the Union.

[8] By having the matter brought before the Court and decided judicially, both the Company and the Union obtained certainty about the issue. The only alternative would have been for the issue to be the subject of collective bargaining with the risk of industrial action and the possibility that it would remain unresolved.

[9] The claim advanced by the Union was a proper one to place before the Court. The issue on which it was decided, the interpretation of the expression "at the Port of Lyttelton", was undoubtedly arguable both ways. That was borne out by the fact that an experienced member of the Authority and I reached different conclusions based on very similar evidence and submissions.

[10] The second factor I take into account is that the Company was unsuccessful in its argument that the second defendants were not "cargo handlers". Given the wording of the collective agreement and the evidence of the Company's own witnesses, this was never seriously arguable. Despite that, a good deal of the evidence was directed to this issue, prolonging the hearing and causing all parties to incur a measure of unnecessary costs.

[11] There will be no order for costs.

A A Couch
Judge

Signed at 12.30pm on 10 February 2015