

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC21A/07
ARC 62/06**

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

AND

IN THE MATTER OF a application for costs

BETWEEN MILES DERL DAVIS
Plaintiff

AND CANWEST RADIOWORKS LIMITED
Defendant

Hearing: By submissions filed on 12 and 14 July 2007
(Heard at Auckland)

Judgment: 11 September 2007

COSTS JUDGMENT OF JUDGE B S TRAVIS

[1] The plaintiff failed in his challenge of a determination of the Employment Relations Authority which held that the nature of his relationship with the defendant was not one of employer and employee. Costs were reserved. The parties have been unable to agree on costs.

[2] The hearing took nearly all of one day and required a number of briefs of evidence to be filed and written submissions. Mr Pollak for the defendant submitted that the criteria upon which the Court awards costs are well established and there were no factors which should indicate that the award should be out of the ordinary or at the high end of the Court's discretion. He observed that plaintiff's counsel was co-operative, documents were filed in a timely fashion and there were no extraneous or irrelevant issues raised by the plaintiff. Consequently the defendant proposed a modest sum of \$4,500 plus GST and inclusive of all disbursements as a contribution towards the greater actual costs incurred by the defendant. The defendant is a publicly listed company and the plaintiff is an individual who is no longer contracted by the defendant. There was no claim for executive time.

[3] Mr Campbell on behalf of the plaintiff accepted that the matter was not complex, either factually or legally, and that all matters were dealt with expeditiously. He observed that the witness statements and closing submissions on behalf of the defendant were heavily based on those prepared for the Authority, although expanded in a number of areas for the benefit of the Court. He observed that the defendant's costs of preparation were not high.

[4] Mr Campbell submitted the plaintiff's financial situation was poor. The plaintiff has no assets and prior to this particular employment, was living in rented accommodation. He referred to the plaintiff's personal circumstances, upon which I will not expand, but it is clear that he is in financial difficulties, has had assets repossessed and is considerably in debt. He was only able to obtain fill-in radio work and is not in receipt of any social welfare benefit but does provide child care assistance for his children.

[5] Mr Campbell submitted that any award for costs should therefore be at the lower end of the scale and may in the end be nugatory. He also invited the Court not to include GST which would be recoverable by the defendant.

[6] Were it not for the plaintiff's financial circumstances, I would have awarded the full sum sought by Mr Pollak on behalf of the defendant for what appears to be a modest contribution toward the defendant's actual costs.

[7] In the plaintiff's financial circumstances, however, I consider that an award of \$3,000, inclusive of disbursements is all that the plaintiff is likely to be able to afford. Any matters of enforcement such as time for payment, will need to be dealt with between the parties.

B S Travis
Judge

Judgment signed at 9.30am on 11 September 2007