

**IN THE EMPLOYMENT COURT  
WELLINGTON**

**WC 6/07  
WRC 16/06**

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

AND IN THE MATTER OF an application for costs

BETWEEN FARMERS TRANSPORT LIMITED  
Plaintiff

AND NOEL KITCHEN  
Defendant

Hearing: Written submissions received 25 January and 13 February 2007

Judgment: 27 February 2007

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**COSTS JUDGMENT OF JUDGE C M SHAW**

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[1] The defendant has applied for costs following the dismissal of the plaintiff's challenge<sup>1</sup> to an Employment Relations Authority determination. Counsel's memorandum on behalf of the defendant seeks awards of costs for both the Authority and the Employment Court proceedings.

[2] For the defendant, Mr Gallie points out that the Authority has already made an order for costs of \$3,000 in favour of the plaintiff.<sup>2</sup> This order was not specifically challenged in the course of the de novo hearing and there is no basis to interfere with it.

[3] That leaves the application for costs in this Court. The plaintiff accepts that it should contribute to them but not on a full solicitor/client basis.

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<sup>1</sup> Unreported, Shaw J, 14 December 2006, WC 26/06

<sup>2</sup> *Kitchen v Farmers Transport Ltd* unreported, G J Wood, 22 March 2006, WA 44/06

[4] Mr Manktelow, for the defendant, submitted that his actual costs in the Employment Court were \$17,025 including GST plus disbursements of \$27.68.

[5] Mr Gallie challenged the reasonableness of those costs because there was only one principal witness called for the defendant and suggests that an appropriate approach would be to apply a three to one ratio of preparation to the actual hearing time of 6 hours based on counsel's normal hourly rate.

[6] Because counsel's hourly rate is not known and no breakdown of the amount claimed as actual costs was supplied to the Court, an alternative and more certain approach is to apply the High Court scale of costs.

[7] The appropriate daily rate for this case is category 2B. It will cover the commencement of the defence, the call-over phone conference, preparation for the hearing, and the appearance at a 1-day hearing which amounts to the total allowable time of 5.2 days. At \$1,600 per day this amounts to \$8,320.

[8] The plaintiff will pay \$8,320 plus GST as a contribution to the defendant's costs in the Employment Court plus disbursements of \$27.68.

**C M Shaw  
JUDGE**

Judgment signed at 3.45pm on 27 February 2007

Solicitors: