

**IN THE EMPLOYMENT COURT
AUCKLAND**

**AC 46/06
ARC 113/04**

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

BETWEEN PETER JOSEPH CACCIOPPOLI
 Plaintiff

AND BOARD OF TRUSTEES OF EDMUND
 HILLARY SCHOOL
 Defendants

AND THE ATTORNEY-GENERAL IN
 RESPECT OF THE CHIEF EXECUTIVE
 OF THE MINISTRY OF EDUCATION
 Second Defendant

Appearances: Matter dealt with by memoranda from counsel

Judgment: 15 August 2006

ORDER AS TO COSTS

[1] These are proceedings by way of a de novo challenge against a decision of the Employment Relations Authority dated 7 December 2004. The Authority determined that the plaintiff, Mr Caccioppoli, had failed to establish the existence of an employment relationship between the defendants and him. The challenge was filed in this Court on 23 December 2004. The de novo challenge named only one of the defendants before the proceedings in the Employment Relations Authority. An application for joinder of the Attorney-General to the proceedings was made. His Honour Judge Couch, on 5 December 2005, made such an order, which was not opposed.

[2] The defendants have each filed a statement of defence and there was initially an appearance under protest to jurisdiction by the first named defendant.

[3] Following the filing of the documents by the defendants there has been total inaction in the proceedings from the plaintiff. No response was received by him to correspondence forwarded by the Registry. Eventually a time limit was set for any response. The plaintiff was notified if there was a failure to respond the proceedings would be treated as being withdrawn. No written response was received. Accordingly, the proceedings were administratively withdrawn from the deadline imposed, being 4pm on Tuesday 11 July 2006.

[4] Notification of the withdrawal to the defendants has resulted in an application for costs against the plaintiff by each of them. I am not aware as to whether there has been any award of costs in their favour in the proceedings before the Authority. Certainly the costs sought relate to the proceedings, which have been filed by the plaintiff in the Employment Court.

[5] I have received memoranda as to costs from counsel acting for each defendant. I earlier made a direction that the plaintiff was to be notified of the applications for costs using his last known address. He was given 7 days to respond, failing which he was notified that the matter would be resolved without further notice to him.

[6] No response has been received from the plaintiff as expected.

[7] Counsel refer me to appropriate authorities as to costs. They have indicated the full extent of the solicitor/client costs incurred by each of the defendants. Each of them submit that an appropriate award of costs would be \$1,500 together with expenses and disbursements reasonably incurred.

[8] In view of the plaintiff's inaction in this matter, it is appropriate that an award of costs be made against him in favour of each of the defendants. Accordingly, there will be an award of costs in the sum of \$1,500 for each of the defendants together with disbursements reasonably incurred.

M E Perkins
Judge

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