

**IN THE EMPLOYMENT COURT  
CHRISTCHURCH**

**CC 9A/06  
CRC 25/05**

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

BETWEEN T & R DISTRIBUTORS LIMITED  
Plaintiff

AND LISA GRIMES  
Defendant

Hearing: Submissions received on 13 September 2006 from the plaintiff  
and 4 October 2006 from the defendant

Judgment: 23 November 2006

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**COSTS JUDGMENT OF JUDGE A A COUCH**

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[1] In my substantive judgment dated 28 August 2006 (judgment number CC 9/06), I found in favour of the plaintiff and, on the basis that costs should follow the event, concluded that the plaintiff was entitled to a contribution to the costs it had incurred in the proceedings in both the Authority and the Court. I then invited the representatives of the parties to provide me with memoranda as to the quantum of costs to be awarded.

[2] Both Mr Gould and Mr Lawson provided me with detailed and helpful memoranda. In addition, Mr Lawson filed two affidavits from Ms Grimes as to her financial circumstances.

[3] Mr Gould informed me that the actual costs incurred by the plaintiff in relation to the Authority's investigation were \$4,500 plus disbursements of \$64. In relation to the proceedings in the Court, he informed me that the plaintiff incurred costs totalling \$12,444.69 plus disbursements of \$516.13. In support of his

submission that these costs actually incurred by the plaintiff were reasonable, Mr Gould also provided me with copies of time records kept by his firm.

[4] While I accept that the costs incurred by the plaintiff in relation to the proceedings in the Authority were reasonable, the additional costs incurred in connection with the proceedings in the Court are surprisingly high. The plaintiff's challenge related to one aspect only of the employment relationship problem which had been before the Authority. The evidence presented by the plaintiff's witnesses was relatively brief and had already been prepared as part of the Authority's investigation. The hearing took less than one day. Some additional work was required to prepare subsequent submissions on a point of law which I raised in the course of the hearing but, taking that into account, I cannot accept that it was reasonable for the plaintiff to have incurred nearly three times the costs in relation to the proceedings before the Court that it incurred in relation to the proceedings before the Authority.

[5] Mr Gould submitted that there were two aspects of the manner in which the defendant conducted her case in the Court which justify a greater than usual contribution to the plaintiff's costs. The first was that, after filing an initial statement of problem in the Authority and receiving the plaintiff's statement in reply, the defendant filed an amended statement of problem necessitating an amended statement in reply by the plaintiff. The second issue was that the original statement of defence in the Court included counterclaims which were later abandoned. I take these matters into account.

[6] Overall, Mr Gould submitted that the defendant should be ordered to pay two-thirds of the total costs incurred by the plaintiff in respect of the proceedings in both the Authority and the Court. There is an obvious difficulty with that submission. While the well known decisions of the Court of Appeal have suggested that two-thirds of actual and reasonable costs incurred is an appropriate starting point for fixing costs in the Court, that approach is not appropriate for fixing costs in the Authority: - see the decision of the full Court in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

[7] In addition, for the reasons I have set out above, I do not accept that the actual costs incurred by the plaintiff in relation to the proceedings before the Court were all reasonably incurred.

[8] For the defendant, Mr Lawson accepted that costs should follow the event but questioned the reasonableness of the costs actually incurred by the plaintiff. He also relied on the well established principle that any award of costs should not be so large as to cause undue hardship to the defendant and submitted that costs should lie where they fall.

[9] In support of this submission, Mr Lawson filed two affidavits sworn by the defendant. In the first affidavit, Ms Grimes deposed to her employment having ended since the Employment Court hearing in May 2006 and said that she has since been on a sickness benefit. She also said that, in the period of more than 2 years since she was made redundant by the plaintiff, she was able to obtain only a total of 6 months' employment and was otherwise on a benefit. In the second affidavit, Ms Grimes provided information about her assets and liabilities. She said that she has a half share in a house and motor vehicle owned jointly with her ex-partner but that those assets are being sold, with her share of the proceeds providing part of the purchase price of a small apartment in which she will live. She deposed to having no other significant assets and no significant liabilities.

[10] But for the defendant's financial position, I would have awarded the plaintiff \$1,800 for costs and disbursements in the Authority and \$4,500 for costs and disbursements in the Court. I find, however, that ordering the defendant to pay those amounts would cause her undue hardship. Accordingly, I order the defendant to pay the plaintiff \$2,000 by way of costs and disbursements in respect of the proceedings as a whole.

A A Couch  
Judge

Judgment signed at 11.00am on Thursday, 23 November 2006

Solicitors: Gibson Sheat, Lower Hutt for the plaintiff  
Southern Local Government Officers Union Inc for the defendant