

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN New Zealand Dairy Workers Union Incorporated (Applicant)

AND New Zealand Dairy Foods Limited (Respondent)

REPRESENTATIVES Rose Alchin, Counsel for Applicant
Anthony Drake, Counsel for Respondent

MEMBER OF AUTHORITY Leon Robinson

DATE OF DETERMINATION 18 February 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] A dispute between these parties was the subject of an investigation and subsequent determination by the Authority in the employer company's favour.

[2] The employer by its Counsel now seeks an award of costs as the successful party in the sum of \$4,500.00. The union's Counsel resists the application and says that the union had little option to seek the Authority's assistance as a consequence of the company's failure to co-operate. It is submitted that costs ought to lie where they fall.

[3] In the earlier determination I stated:-

[39] The current shift patterns have not been recorded in writing although the Union has written to the Company seeking to achieve that. The Company has not responded although I accept that work is presently in progress to do so....

[40] I incline to the view that this present employment relationship problem might well have become apparent or indeed resolved earlier, had the process of recording the roster and shift patterns in writing under clause 3.5.1.2 been attended to with diligence after the commencement of the Collective.

[4] While the company was successful, I consider that it incurred its costs as a result of its own inaction. I had earlier found that the union had written to the company seeking to have shift patterns recorded in writing. The company had not responded. The union had little choice to seek the Authority's assistance in pursuit of certainty for its members.

[5] For those reasons I indicated my preliminary view in the substantive determination that I considered that costs ought to lie where they fall. I am not persuaded that I should revise my preliminary view and accordingly I now confirm it here.

[6] In all the circumstances, I decline to exercise my discretion to award costs. There will be no order for costs.

Leon Robinson
Member of Employment Relations Authority