

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Conway Butchart Carrick (Applicant)

AND European Stone Surfaces Limited trading as Granite Transformations
(Respondent)

REPRESENTATIVES Peter Hodge, Advocate for Applicant
Ray Parmenter, Counsel for Respondent

MEMBER OF AUTHORITY R A Monaghan

MEMORANDA RECEIVED 21 and 28 February 2005

DATE OF DETERMINATION 21 March 2005

DETERMINATION OF THE AUTHORITY ON COSTS

- [1] In a determination of the above dated 17 January 2005, I concluded Conway Carrick was not constructively dismissed and did not have a personal grievance.
- [2] Costs were reserved, and the parties have filed memoranda on the matter.
- [3] Counsel for the respondent cited costs of \$6,500 and sought a contribution to these. Since the respondent was the successful party, it is appropriate to consider an order for payment of a contribution to its costs.
- [4] The advocate for the applicant asked that costs lie where they fall, or that the findings adverse to the respondent be taken into account to reduce the applicant's contribution. He also said the applicant has secured only minimal income since 1 May 2004 and asked that any costs awarded against him be payable in reasonable monthly instalments.
- [5] While the effect of some of my findings was that the respondent handled aspects of the applicant's employment poorly, the applicant cannot excuse his own badly judged behaviour and breaches of the employment agreement by reference to those matters. I do, however, apply a slight reduction to the amount I would otherwise have awarded in order to take into account the effect of the respondent's poor human resource management.
- [6] The applicant's ability to pay is a relevant factor in assessing costs, but I did not find persuasive the assertion that the applicant earned approximately \$10,000 in the 10 months to 28 February 2005. He is a skilled tradesman or equivalent, and after his resignation he went into a business which was allegedly in competition with that of the respondent. Although he denied at the investigation meeting that the business was doing well, I have not been given enough information about how his earnings were calculated to accept the advocate's assertion.

[7] The applicant is therefore ordered to contribute to the respondent's costs in the sum of \$1,500.

R A Monaghan
Member of Employment Relations Authority