

Determination Number: WA 42A/05

File Number: WEA 329/04

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

<b>BETWEEN</b>	New Zealand Amalgamated Engineering Printing & Manufacturing Union (first applicant)
<b>AND</b>	Venus Anderson and 52 others (whose names are listed on the attached schedule (second applicants)
<b>AND</b>	Sally Lewis (third applicant)
<b>AND</b>	Sunbeam Corporation Limited (respondent)
<b>REPRESENTATIVES</b>	Tony Wilton for the applicant Rob Towner for the respondent
<b>MEMBER OF THE AUTHORITY</b>	Denis Asher
<b>SUBMISSIONS RECEIVED</b>	9 & 11 May 2005
<b>DATE OF DETERMINATION</b>	20 May 2005

**DETERMINATION OF AUTHORITY: Costs**

## **Employment Relationship Problem**

1. I earlier found in against the applicants in a dispute over a claimed entitlement to redundancy compensation – refer to determination WA 42/05, 11 March 2005. Costs were reserved.

## **Submissions: the respondent's position**

2. Counsel for the respondent, Mr Rob Towner, says that his client's actual costs were over \$30,000. The Company seeks an award of \$10,000 as a reasonable contribution to its costs – submissions received 9 & 11 May 2005.
3. In support of its claim the Company says it was not an ordinary personal grievance, being brought by the Union and 54 of its members. The Company's potential liability was calculated as greater than \$300,000. It was a large claim that failed completely. The nature and size of the claim justified travel to Palmerston North to brief evidence. Full written submissions were warranted.
4. Neither of the rationales for the Authority's policy of awarding only modest costs against individuals who are unsuccessful in personal grievance claims applies in this case, i.e. the rationale of not impeding individuals from bringing claims and that of employers not needing to incur significant costs in defending claims because of a less legalistic approach apply (see *Graham v Airways Corp of NZ Ltd*, 28 January 2004, AA 39/04, par 7).
5. The first applicant is the largest, most powerful union in the country. In addition the 54 applicants can bear a portion of the costs. Although the investigation was short, the Company's defence needed to be properly prepared in respect of a large claim.
6. Having regard to the above, an award of \$10,000 is fair and reasonable.

## **Applicants' position**

7. The Company has given no detail of the \$30,000 + costs it says it has incurred. The amount seems high in view of the issues.

8. The applicants should not have to subsidise the Company's decision to brief Auckland counsel.
9. Much of the evidence was of a *parol* nature as to the subjective intent of the parties. The applicants should not have to contribute to the cost of presenting it.
10. This was a straight forward dispute over the interpretation and application of a collective agreement: the proceedings involved a very limited number of common issues as illustrated by the fact that the investigation took less than half a day.
11. There are no grounds to depart from normal costs principles, or to apply *Graham* (above).
12. If the Union's size is relevant then so also is that of the Company – a multinational conglomerate. The other applicants are seasonal workers with limited incomes. A contribution of \$1500 is reasonable.

### **Discussion and Findings**

13. The Union accepts that costs should follow the vent, in the normal manner. At issue is the size of those costs.
14. Despite the size of the principal parties of the participants, the issue in dispute was a simple and straight forward matter of interpretation. What was originally set down for two days was disposed of in half a day. Indeed, this is a matter that could have been resolved on the papers.
15. The Company could also have saved more of its costs by briefing a local representative.
16. I reach this conclusion by adhering to well-known principles relating to costs awards (see for example, *Harwood v Next Homes Ltd*, unreported, 19 December 2003, Travis J, AC 70/03) and because I favour the Union's proposal for the reasons set out above.

**Determination**

17. The applicants, New Zealand Amalgamated Engineering Printing & Manufacturing Union, Venus Anderson and the 52 others whose names are listed on the attached schedule, and Sally Lewis are to jointly and severally pay as a contribution to the respondent, Sunbeam Corporation Limited's, costs the total sum of \$1,500.00 (one thousand and five hundred dollars).

**Denis Asher**

**Member of Employment Relations Authority**