

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Paul Detoma MacDonald (Applicant)
AND Q-Med (Sweden) Australia Pty Limited (Respondent)

AND Q-Med (Sweden) Australia Pty Limited (Counter-Problem Applicant)
AND Paul Detoma MacDonald (Counter-Problem Respondent)

REPRESENTATIVES Patricia Mills, Counsel for Paul Detoma MacDonald
Anna Fitzgibbon, Counsel for Q-Med (Sweden) Australia Pty Limited

MEMBER OF AUTHORITY Leon Robinson

SUBMISSIONS RECEIVED 7 December 2005
21 December 2005

DATE OF DETERMINATION 21 December 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 23 November 2005 I ordered that these employment relationship problems be removed to the Employment Court for determination. The parties were unable to resolve the question of costs between them and both Counsel have now lodged memoranda.

[2] Q-Med now seeks an award of costs against Mr MacDonald. Its costs are advised to be in the sum of \$3,215.00 inclusive of GST and disbursements. It is the GST exclusive portion that is relevant for present purposes. It is submitted that Mr MacDonald's response to Q-Med's application for removal was not strongly opposed and that at the investigation meeting, he conceded that it was for the Authority to decide the matter. Q-Med says that notwithstanding that concession, Mr MacDonald still formally opposed the application causing Q-Med to incur costs unnecessarily. Q-Med seeks a contribution to its costs in the sum of \$1,500.00.

[3] Mr MacDonald says that even though he made no opposition to the application, Q-Med was still obliged to make out the grounds for the application to the Authority's satisfaction. He says too that he did not consider mediation had been completed. He says there was nothing in his conduct that would have caused Q-Med to take any more steps that were necessary to persuade the Authority to remove the matter. He submits that costs ought to be left to lie where they fall.

[4] The Investigation Meeting took less than one half day and Q-Med succeeded in persuading the Authority to remove the matter.

[5] Mr MacDonald's consent or otherwise to the application is irrelevant. The parties cannot oust the Authority's jurisdiction by agreement between them. The grounds for removal are prescribed by statute. Those grounds have been made out, but the costs incurred in making that application were not directly attributable to Mr MacDonald.

[6] I conclude then that costs ought to be left to lie where they fall. Exercising my discretion on a principled basis, **I order that neither party shall have costs against the other.**

Leon Robinson
Member of Employment Relations Authority