

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Byron Knight, Paul Carrucan and Brian Webb (Applicants)

**AND** Transportation Auckland Corporation Ltd and Cityline (NZ)  
Limited trading as Stagecoach Auckland (Respondents)

**REPRESENTATIVES** Byron Knight and Paul Carrucan In Person  
Michelle Hall-Collins, Counsel for Respondents

**MEMBER OF AUTHORITY** Leon Robinson

**SUBMISSIONS RECEIVED** 10 November 2006  
27 November 2006

**DATE OF DETERMINATION** 27 November 2006

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

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**The Authority determines that:-**

**Byron Knight, Paul Carrucan, and Brian Webb jointly and severally are ordered to pay to Transportation Auckland Corporation Limited and Cityline (NZ) trading as Stagecoach Auckland the sum of \$1,500.00 as a contribution to costs.**

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[1] By a Determination dated 30 October 2006, I declined to investigate the applicants' statement of problem. I also invited the parties to submit memoranda dealing with costs. The respondents now make application for costs.

[2] Ms Hall-Collins lodged a memorandum on 10 November 2006. The respondents seek indemnity costs against the applicants on the basis that the applicants' conduct allegedly lacked merit and was taken at a time when they had or should have had knowledge that the substantive issue was already before the Employment Court. The memorandum is full and comprehensive in terms of its treatment of the Authority's functions, purpose and methods and the principles relating to indemnity costs. The memorandum advises the respondents' fees of representation are in the sum of \$3,117.25. Alternatively a contribution of \$2,750.00 is sought.

[3] The applicants respond today<sup>1</sup> by a submission which is largely unhelpful. Much of it details untested allegations relating to substantive issues. It concludes with a submission that the respondents should meet their own costs and it denies the problem raised by them is vexatious, frivolous, improper or unnecessary.

[4] Although I had formed a preliminary view of matters, I considered it prudent to meet with the applicants and the respondents' counsel to discuss the problem and whether it should be investigated. The discussion was useful and took place over about an hour.

[5] An award of costs is not directed at punishing an unsuccessful party. Such awards are directed at compensating a successful party for costs incurred.

[6] The applicants' statement of problem lodged on 5 October 2006, essentially alleges that the Authority fixed new terms and conditions of employment by its Determination numbered AA191/06 and thereby it acted outside its jurisdiction contrary to section 163 of the *Employment Relations Act 2000*. It was on that basis that the applicants' sought further investigation by the Authority and which I declined. The Full Court has subsequently held this is no basis at all. In its judgment of 7 November 2006<sup>2</sup>, the Court says at paragraph 4:-

*[4] From reading its determination it is clear that the Authority interpreted the terms of the CEA, not on the basis of any agreed statement of facts but on the plain meaning of the words used as it is entitled to do. The argument which the applicants advanced as to the applicability of s 163 of the Employment Relations Act 2000 which prevents the Authority from cancelling or varying any collective agreement, has no basis.*

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<sup>1</sup> inappropriately in the first instance to my email address

<sup>2</sup> *NZ Tramways & Public Transport Employees Union Inc & Anor -v- Transportation Auckland Corporation Ltd & Cityline (NZ) Ltd*, AC61/06, Travis, Shaw & Perkins JJ, 7 November 2006.

[7] My preliminary view was similarly dismissive but I considered it prudent to meet with the applicants and counsel on 30 October 2006 to discuss matters.

[8] I find the applicants have pursued a claim that has no basis. They are liable to recompense the respondents for costs the respondents have incurred that they should not have. I have no difficulty with the notion that a baseless claim ought to ordinarily rightly attract an indemnity costs. However, I am of the view that the proper exercise of the present jurisdiction, in equity and good conscience requires that I have regard to the applicants' means and their ability to pay. They are bus drivers with modest incomes.

[9] I mean no disrespect to counsel's very helpful contribution to the Authority's task in determining that these applicants shall contribute to costs of \$1,500.00 which they shall be jointly and severally liable to pay to the respondents.

[10] Exercising my discretion on a principled basis, **I order Byron Knight, Paul Carrucan and Brian Webb jointly and severally to pay to Transportation Auckland Corporation Ltd and Cityline (NZ) Limited trading as Stagecoach Auckland the sum of \$1,500.00 as a contribution to costs.**

Leon Robinson  
**Member of Employment Relations Authority**