

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN William Katipo (Applicant)
AND New Era Plastics Limited (Respondent)
MEMBER OF AUTHORITY Alastair Dumbleton
COSTS SUBMISSIONS RECEIVED 16 June, 4 and 13 July, 2006
DATE OF DETERMINATION 17 July 2006

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] Following a meeting to investigate an employment relationship problem between Mr William Katipo and his former employer, New Era Plastics Limited (NEP), the Authority formally determined that Mr Katipo's stated problem was not a matter NEP should be held legally responsible for. The Authority's determination and reasoning for it were issued under AA163/06 dated 10 May 2006.

[2] To conclude this investigation a further determination must now be given as to costs, a question the parties were left to try and settle themselves but have been unable to.

[3] In its determination the Authority found that Mr Katipo's dismissal was the consequence of a genuine redundancy situation arising in the business of his employer NEP. I found also that procedurally the decision to dismiss and its implementation was fair and reasonable in all the circumstances.

[4] Without providing any breakdown of the costs billed to it by its legal representative, NEP has sought an order for costs of \$6,000 (increased later to \$6,874) on a full indemnity basis. For NEP it is submitted that Mr Katipo did not act in good faith in the course of the Authority's investigation and that by applying for reinstatement before attending mediation, he put NEP to extra cost.

[5] Mr Katipo has sent the Authority a memorandum in which he describes his personal circumstances, including his limited means diminished by the loss of his employment with NEP. He requests an order that costs lie where they fall.

[6] Principles for awarding costs have been steadily developed by the Authority in the course of the many investigations completed by it since 2000. The Employment Court endorsed those principles which are listed at para [44] of the Full Court's judgment in *PBO Ltd v Da Cruz*, unreported, 9 December 2006, AC 2A/05. In principle full indemnity awards of costs are available to a party from the Authority, but I am satisfied in the circumstances of this case that there is no proper basis for making such an award.

[7] In determining Mr Katipo's grievance claim, the Authority had to decide, as a matter of degree, whether the same duties and responsibilities remained following the contended restructuring. I held that in the position Mr Fergusson took after the reorganisation, he had different duties and responsibilities from those Mr Katipo had as Factory Manager before the changes.

[8] Nevertheless I consider that Mr Katipo's claim was meritorious and because it was not settled in mediation he was entitled to have it investigated and determined by the Authority. I do not understand why the later inclusion by him of a claim for reinstatement, the primary grievance remedy, should have caused NEP any additional cost. I can see nothing wrong with applying for reinstatement when the genuineness of a redundancy was being challenged and, as in this case, challenged on much more than faint grounds.

[9] I consider that the NEP's claim that Mr Katipo's redundancy was a genuine redundancy, was borderline. It seemed possible that Mr Katipo lost his job simply to create a place for Mr Ferguson, who had been "restructured" by NEP's major financial backer, his father-in-law. Although I gave NEP the benefit of the doubt in the end, for the purposes of fixing costs I regard the grievance claim against it as having been a close call.

[10] I agree with Mr Katipo that the investigation meeting was a relatively short one, occupying less than a day. A reasonable contribution to costs, if ordered, would need to reflect that, as well as the straightforward nature of the issues. Typically in other relatively brief and simple cases but where the result has been more compelling, an award of around \$800 to \$1000 at most would be likely.

[11] Notwithstanding the result in this case, in the circumstances I consider that costs should lie where they fall. Accordingly, no order is made.

A Dumbleton
Member of Employment Relations Authority