

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number: WA 93A/07
File Number: 5047968

BETWEEN MICHAEL ROWLAND BAUGEN
Applicant

AND GAVIN and SUSAN URE t/a
AFFORDABLE PLUMBING AND GAS
LIMITED
Respondents

Member of Authority: G J Wood

Submissions received: 22 August 2007

Determination: 24 August 2007

COSTS DETERMINATION OF THE AUTHORITY

1. In my Determination of 13 June 2007 I dismissed Mr Baugen's claim for want of jurisdiction, as I found that the real nature of the relationship between the parties was not one of employer and employee.
2. On behalf of the respondents, Mr Mackay sought a contribution to the respondents' costs of \$10,751.40 to the respondents' costs of \$16,290. Disbursements constituted \$15.39 of this total. He did so in reliance on *Binnie v. Pacific Health* [2002] 1 ERNZ 438 (CA).
3. In addition to costs for the investigation meeting, Mr Mackay considered that additional costs should be awarded because the respondents prepared a bundle of documents and a chronology, had to supply rebuttal evidence to the applicant's unnecessarily complicated claims, had to get supporting documentation from the Drainlayers and Gasfitters Board and had to prepare two sets of submissions. He also submitted that account should be taken of the requirement of the respondent to provide a statement in reply in advance of mediation, which led to additional costs.
4. In reply, Mr Baugen submitted that the Authority had no jurisdiction because the matter has been challenged. He also submitted that no costs should be awarded in any event because:

- the application was in the nature of a test case because of the issue of whether apprenticeship agreements could ever constitute a relationship other than that of employer and employee;
 - that no specific files or accounts have been provided; and
 - that Mr Baugen remains unpaid for considerable hours worked in the respondent's business.
5. The Authority does not apply *Binnie* in setting costs, as that judgment relates to costs in the Employment Court. Rather the Authority is bound by *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] ERNZ 808. That case sets out the broad discretions available to the Authority when setting costs, taking into account its investigatory role. Similarly, Mr Baugen is incorrect in his presumption that the Authority has no jurisdiction to determine costs simply because the matter has been challenged to the Employment Court. Rather it is for the Authority to set costs and then for the Court to review them as part of its deliberations.
 6. While this matter did have some interesting legal and factual aspects to it, it could not be described as a test case in that it does not necessarily affect a large range of workers. In fact, despite the interesting issues to be determined, in many ways it was a standard employment relationship problem, albeit that additional information had to be sought after the investigation meeting.
 7. Given Mr Baugen's position as an applicant representing himself, I do not consider that he should be penalised in costs for not presenting his side of events in as an efficient manner as an experienced representative would have. The fact that a statement in reply was required in advance of mediation is irrelevant, as one would have been required anyway. Finally, I take no account of the lack of payment for some activities Mr Baugen undertook for the Ures without payment as the payment due (if any) does not arise from an employment relationship.
 8. Costs normally follow the event and there was nothing in this case to rebut that presumption. The matter was comfortably completed in a day. Although I accept Mr Mackay's statement concerning the level of costs the Ures incurred, this case was a fairly standard one about whether an employment relationship existed or not and a standard costs award is therefore warranted. Taking all matters into consideration, I conclude that an appropriate sum for costs is \$2,000, plus disbursements as claimed of \$15.39.

9. I therefore order the applicant, Mr Michael Baugen, to pay to the respondents, Gavin and Susan Ure trading as Affordable Plumbing & Gas Limited, the sum of \$2,015.39 in costs and disbursements.

G J Wood
Member of the Employment Relations Authority