



[4] This matter has had a long history which I will briefly set out.

### **The history of the proceedings**

[5] The proceedings against the respondents commenced when on 21 November 2005 an application for interim reinstatement was lodged with the Authority on behalf of Mr Keehan.

[6] On 29 November 2005, the Authority held a telephone conference with Mr Keehan's counsel, Mr Goldstein and Mr Wilson on behalf of the respondent and arrangements were made for timetabling of affidavits and a statement in reply from the respondents. Agreement was reached during that telephone conference that the parties would attend mediation. A date was timetabled for an investigation meeting to deal with the applicant's application for interim reinstatement on 16 December 2005.

[7] The respondent duly lodged affidavits together with a statement in reply.

[8] After mediation had been held Mr Goldstein sought an adjournment of the investigation meeting scheduled for 16 December 2005 until the New Year. Mr Goldstein set out in his letter to the Authority, amongst other matters, that time was required to consider whether reinstatement would still be sought by Mr Keehan.

[9] On 17 January 2006 a telephone conference was held. Mr Goldstein advised that Mr Keehan still wanted reinstatement but urgency was no longer required. Mr Goldstein advised the matter could be set down for a substantive hearing and that Mr Keehan was intending to make an application for legal aid.

[10] Dates were given for an investigation meeting on 2 and 3 May 2006.

[11] On 30 January 2006, Mr Wilson advised that the respondent's principal witness would be in Europe until 10 May 2006 and sought an adjournment of the investigation meeting scheduled for 2 and 3 May 2006.

[12] It was then agreed that an investigation meeting would proceed on new dates, 23 and 24 May 2006.

[13] On 18 April 2006, Mr Goldstein wrote to the Authority and applied for an adjournment of the proceedings on the basis that Mr Keehan did not have money to

fund the claim and would have to make application for legal aid. Mr Wilson did not consent to the adjournment.

[14] On 26 April 2006, the Authority held a further telephone conference to hear from Mr Goldstein and Mr Wilson with respect to the adjournment. The adjournment was granted on the basis that Mr Keehan would be significantly prejudiced if he was required to proceed on the dates of 23 and 24 May 2006. It was noted that the adjournment was to be a final adjournment, costs were awarded to the respondent in the sum of \$250 on the adjournment and Mr Goldstein was to advise the Authority by a particular date whether the legal aid application had been lodged.

[15] On 4 May 2006, there was a further telephone conference with the Authority to fix new dates for an investigation meeting. Dates were given to the parties for 15 and 16 August 2006.

[16] On 12 May 2006, Mr Goldstein advised the Authority that he had delivered Mr Keehan's application to the Legal Services Agency and that Mr Keehan withdrew his application for reinstatement.

[17] On 28 July 2006, Mr Goldstein applied to the Authority for an adjournment of the matter on the basis that Mr Keehan was not well enough to proceed on 15 and 16 August 2006. A doctor's certificate was provided and the Authority and Mr Wilson were also advised that Mr Keehan had been declined legal aid.

[18] On 2 August 2006, a further telephone conference was held with the Authority. The adjournment was granted on the basis of a medical certificate that Mr Keehan was too unwell to attend the investigation meeting. Mr Goldstein was to advise the Authority by 31 August 2006 whether Mr Keehan wished to proceed with the matter and when he would be well enough to attend an investigation meeting.

[19] On 26 October 2006, an Authority support officer wrote to Mr Wilson and Mr Scott to set down a directions conference to discuss whether Mr Keehan's claim would be proceeding, dates for an investigation meeting and if, as alleged by Mr Wilson, Mr Keehan was now working.

[20] Mr Goldstein appeared not to have had full instructions from that point on for some months.

[21] On 2 March 2007, a further telephone conference with the Authority was held. Dates were given for an investigation meeting on 24 and 25 July 2007.

[22] On 5 June 2007, Mr Goldstein advised the Authority that he no longer acted for Mr Keehan and had returned his file to Mr Harley, with whom Mr Goldstein said the Authority should liaise with in future.

[23] Mr Keehan did not lodge and serve statements of evidence by 19 June 2007 as directed to following the 2 March 2007 telephone conference.

[24] On 22 June 2007, Mr Wilson sent an email to the Authority which was copied to Mr Harley in firm tones about the applicant's conduct. He indicated in that email that if the matter was discontinued, then costs would be sought on such discontinuance.

[25] On 22 June 2007, the proceedings were discontinued by Mr Keehan.

### **Determination**

[26] The respondents in this matter have been put to considerable expense as is clearly set out by the history of this matter. The respondents have had to lodge affidavits in terms of the interim application for reinstatement and Mr Wilson has had to attend several telephone calls and correspond with the Authority on several separate occasions in terms of progress with respect to this matter. In those circumstances although mindful of Mr Keehan's financial position I am not minded to order that costs should lie where they fall.

[27] I consider that there should be an award for costs in the respondent's favour in terms of this proceeding. In all the circumstances, I am of the view that an award of costs in the sum of \$500 would be fair and reasonable.

[28] I order Kevin Keehan to pay to Cedric and Emma Monk trading as CJ & E Monk and R.E.M. Farms Limited the sum of \$500 being costs in terms of CEA372/05 to the date the proceedings were discontinued.

H Doyle  
Member of the Employment Relations Authority

