

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Louis Van der Walt (Applicant)
AND Able Metal Products Ltd (Respondent)
REPRESENTATIVES Tom Skinner (for Applicant)
Pavez Akbar (for Respondent)
MEMBER OF AUTHORITY Janet Scott
DATE OF DETERMINATION 30 April 2007

COSTS DETERMINATION

The Authority issued a Determination in this matter on 21 February 2007. Costs were reserved on the basis that the parties were to attempt to resolve the issue between them. They have been unable to do so and the parties have now forwarded submissions so that the Authority can determine the matter.

It is argued for the respondent that the Court's findings in *Binnie v Pacific Health* [2002] 1 ERNZ and *Health Waikato v Elmsly* CA 69/03 should guide the Authority in the setting of costs in this matter. However, it is also argued that given the fact the applicant was unsuccessful in his claim and the fact the respondent is a small business with fewer resources than many other employers the Authority should consider an award of actual costs which, it is submitted, were reasonably incurred. The respondent asks the Authority to award costs and disbursements in the sum of \$5841.34¹.

The applicant's representative noted that the Authority actually found the applicant's dismissal on 2nd June 2006 was unjustified and that it also found that had the the applicant's later dismissal on 22 June been before it would have found that that dismissal was also unjustified. It is submitted for the applicant that this is a case where it is appropriate to let costs lie where they fall.

Discussion

This was an unusual case. The problem at the heart of the matter lay with the respondent's very poor selection process.

It is the case that the Authority found that the applicant's dismissal on 2 June 2006 was unjustified. However, it also found that any grievance the applicant had in relation to his dismissal was resolved

¹ Details submitted.

in subsequent discussions between the parties and the applicant agreed to and commenced work under new arrangements with the respondent.

The applicant was dismissed from his new employment with the respondent on 22 June in circumstances where, had the matter been before me, I would have found the dismissal to have been unjustified albeit the applicant's contribution to the events giving rise to this hypothetical grievance would have disentitled him to remedies.

Determination

Costs should follow the event and the relevant principles are those set out in *PBO Ltd v Da Cruz* [2005] 1 ERNZ rather than the principles contained in the cases cited above as the respondent has submitted.

On balance I consider that an modest order in the respondent's favour is called for and I direct the applicant to pay to the respondent the sum of \$1000 to reimburse it for the costs it incurred in defending this matter.

Janet Scott
Member of the Employment Relations Authority