

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

Determination Number:
AA 200/07
File Number: 5087854

BETWEEN	RAYMOND WYNNE Applicant
AND	THE ORDER OF ST JOHN MIDLAND REGIONAL TRUST BOARD Respondent

Member of Authority:	R A Monaghan
Representatives:	Mark Beech, counsel for Applicant Mark Hammond and Prue Dawson, counsel for Respondent
Submissions received:	13 June 2007 from Applicant 25 May 2007 from Respondent
Determination:	03 July 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] This is an application for costs arising out of an urgent application filed in the Authority, but which was not the subject of a determination by the Authority. The framing of the associated statement of problem has created an issue over whether the application was withdrawn in its entirety, so that the respondent is entitled to consideration of an award of costs now, or whether something remains before the Authority following the withdrawal and costs should be determined once that matter has been resolved.

The contents of the statement of problem

[2] On Friday 18 May 2007 the solicitors for Raymond Wynne filed a statement of problem in the Authority saying Mr Wynne had a personal grievance in the nature

of a disadvantage in respect of his employer, the Order of St John Midland Regional Trust Board (“St John”). The application was accompanied by a request that the matter be accorded urgency.

[3] The application as filed was very specific and narrowly-defined, apparently having the practical aim of securing Mr Wynne’s attendance at a work-related social function to be held the next evening, or reimbursing him for his associated costs if attendance were not possible. Mr Wynne was under suspension while an investigation into allegations about his conduct proceeded, and in association with that he had eventually been advised he was not to attend the function.

[4] The letter accompanying the application said:

“The issue which the Applicant wishes the Authority to resolve is whether the employer imposed suspension can extend to a social event to be held 19 May 2007.”

[5] Moreover the statement of problem itself identified the problem for the Authority to resolve as being:

- a. That the Respondent cannot use suspension as a punitive action.
- b. That the respondent is acting unjustifiably in extending the scope of suspension to include social events that:
 - i. The respondent is not organising:
 - ii. The Applicant is attending in a private partner capacity.
- c. The unjustified disadvantage that is being suffered by the Applicant as a result of the Respondent attempting to widen the scope of the suspension.
- d. The Respondent has consented to attendance at the social function and as a result costs were incurred by the Applicant. The Respondent has now revoked their permission without justification.
- e. There are no genuine health and safety issues for the Applicant not to attend ...”

[6] The remedies sought amounted to orders: that a suspension cannot extend to a social event; preventing St John from prohibiting Mr Wynne’s attendance at the social event; reimbursing him for costs he incurred in making arrangements to attend; and that the suspension could relate only to operational duties while the allegations were being investigated and could not be used as a disciplinary action.

[7] The statement of problem was made available to St John's solicitors, who filed a statement in reply by facsimile at about 3.08pm on 18 May. The statement was full and detailed.

[8] The Authority accorded urgency to the matter for the purpose of attempting to resolve the dispute about attendance at the social function, and a conference call was arranged for 4pm on 18 May.

[9] The call duly commenced. However it transpired during the call that Mr Wynne no longer sought orders in respect of his attendance at the function. The Authority had not been alerted of this informally when it could have been, and as at the commencement of the call it had not received a letter of withdrawal which had apparently been prepared. It seems Mr Hammond had received the letter of withdrawal some 5 minutes before the call commenced. On being informed of the letter's existence I treated the matter as withdrawn and the call was abandoned.

[10] The Authority was then provided with the letter of withdrawal.

[11] The letter set out Mr Wynn's reasons for deciding he would not attend the function anyway, and included the following assertions:

"Our client maintains that the suspension is unjustified and that St John is using the suspension as a disciplinary tool, which it cannot do. Accordingly the application before the Authority remains however we will withdraw the urgent order relating to the Ball."

[12] I do not accept that the statement of problem and accompanying letter were adequate to alert the Authority and the respondent to the raising of a wider grievance in relation to the justification for the suspension. At the time it was not possible to do more than speculate about whether a grievance would be raised in respect of the justification for the suspension, and nothing in the matter as filed indicated such a grievance had already been raised. Nor do I accept the documents as filed in the Authority prior to the conference call raised a grievance in those terms. It is unfortunate that all of this led to further confusion the following week regarding the provision of mediation assistance in respect of matters 'before the Authority'. As at

the withdrawal of the urgent application, there was nothing before the Authority. I do not accept that the letter of withdrawal placed the grievance concerning the justification for the suspension 'before the Authority'.

Costs in respect of the withdrawal

[13] The above circumstances caused considerable waste of time both for the Authority and the respondent. On the face of the matter the respondent is entitled to an award of costs in respect of the waste of its time. Counsel for the respondent has sought full indemnity costs in the sum of \$2,322 plus GST. As far as the application before the Authority is concerned I accept those costs were avoidable. In principle that state of affairs should sound in costs against the applicant although it is not necessarily the case that full indemnity costs are appropriate.

[14] However a primary submission of counsel for the applicant was that there was an ongoing matter before the Authority, and that costs should be addressed once the matter has been finally resolved. I have addressed that submission with reference to what is before the Authority, but there have been significant developments since then. Most notably, I am told the applicant was dismissed on 9 June 2007. Counsel says that, as a result, he 'is preparing to issue proceedings which will include an unjustified disadvantage claim for the present issue'.

[15] If I accept counsel's indication, then there are significant outstanding matters between the parties. It is appropriate for costs in this matter to remain reserved pending a final resolution (whether by way of settlement or otherwise) or determination of those matters.

[16] Costs are reserved accordingly.

R A Monaghan

Member of the Employment Relations Authority