

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Pulp and Paper Industry Council of the Manufacturing and Workers'
Union (First Applicant)

Lynette Weatherly (Second Applicant)

AND Norske Skog Tasman Limited

REPRESENTATIVES Kathryn Beck for First and Second Applicants
Richard McIlraith for Respondent

MEMBER OF AUTHORITY Vicki Campbell

DATE OF DETERMINATION 21 March 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 15 December 2006 I found Norske Skog Tasman Limited (NST) had not breached its obligations under its collective employment agreement with the Pulp and Paper Industry Council of the Manufacturing and Workers' Union ("the Union"), nor the Employment Relations Act 2000. I also found that the consultation process adopted by NST met the requirements of its policy dated 31 August 2004.

[2] I reserved the question of costs and invited the parties to resolve the matter of costs between them. They have been unable to do so and I am now in receipt of memorandum from both parties.

[3] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[4] There is nothing in this case to derogate from the principle that costs follow the event and that the successful respondent should receive a contribution to reasonably incurred costs. Therefore, I have considered the submissions made by the parties and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of NST.

[5] NST seek only a contribution of costs from the Union and not Ms Weatherly. NST's submission is that the issue was, to a significant extent, a dispute between NST and the Union in relation to consultation about the 315K restructuring policy. NST seeks a contribution of \$4,000 plus GST and disbursements. The submissions do not advise the Authority what the total account for costs incurred by NST were, neither does it advise the Authority how the costs were incurred. NST does, however, set out its disbursements of \$248.51.

[6] In support of its submissions NST referred me to several cases determined by the Authority in which awards of costs were between \$4,500 and \$10,000. I accept the submissions from the applicant that in all those cases either the investigation meeting exceeded one day, or reasonable offers to settle were made and taken into account by the Authority.

[7] I accept also the submission from the applicant that the Authority is required to assess whether the costs incurred were reasonable. I am unable to make this assessment as NST has failed to provide me with the relevant information.

[8] Pulp and Paper Industry Council of the Manufacturing and Workers' Union is required to pay to Norske Skog Tasman Limited the sum of \$2,000.00 plus disbursements of 248.51 as a reasonable contribution to costs given the subject of the investigation and the duration of the investigation meeting.

[9] An order is made accordingly.

Vicki Campbell
Member of Employment Relations Authority