

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 38A/08  
5073205

BETWEEN NZ Tramways & Public  
Passenger Transport Authorities  
Employees IOUW (Wellington  
Branch)  
Applicant

AND Cityline (New Zealand) Limited  
t/a Cityline Hutt Valley  
First Respondent

AND Wellington City Transport  
Limited  
Second Respondent

Member of Authority: Denis Asher

Representatives: Melanie Brewer and Paul McBride for the Union  
Andrew Caisley for the Companies

Submissions received: Submissions received by 10 September 2008

Determination: 2 October 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a preliminary determination dated 16 April 2007 (WA 55/07) I struck out part of the union's claim seeking a declaration that a multi employer/union collective agreement was void *ab initio*. Costs were reserved.

- [2] The matter went on challenge to the Employment Court (see WC 23/07) which reinstated the claim: *NZ Tramways & Public Passenger Transport Authorities Employees IUOW v Cityline (NZ) Ltd t/a Cityline Hutt Valley & Anor* [2007] 1 ERNZ 667.
- [3] The substantive issues between the parties were finally settled by way of a consent determination dated 8 April 2008 (WA 38/08).
- [4] In submissions received on 14 August and 9 September the union now seeks costs in respect of the preliminary matter determined by the Authority in April 2007.

### **Summary of Union's Costs Claim**

- [5] The union seeks costs of \$3,000 in respect of preliminary matters heard before the Authority on 11 April 2007.
- [6] The union relies on the Employment Court decision of *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.
- [7] The union's actual costs were \$4,120 plus GST.
- [8] The hearing lasted only half a day because of the substantial preparation by both parties for which the applicant should be compensated.
- [9] A notional daily rate of \$3,000 costs properly reflects the 3 years that have passed since the notional daily rate identified in *Da Cruz* (above).
- [10] The arguments raised involved novel questions of law that necessitated additional research.
- [11] The companies lost their argument in the Employment Court and thereby put the union to unnecessary expense.
- [12] The Employment Court rejected the contention the matter was a test case.
- [13] Three thousand dollars is an appropriate costs award in this case.

## **Summary of Companies' Costs Claim**

- [14] In submissions received on 4 September the companies say that, in its costs decision (WC23A/07), the Employment Court noted the issues were properly raised and that the respondents' should not be penalised for taking the point (although costs of \$3,239.70 were awarded to the union).
- [15] The issues raised included an unresolved matter of law at the time and it was therefore in the nature of a test case.
- [16] The issue was a point of law. The parties were not required to prepare or present evidence; their written submissions were brief because of the confined point at issue. The investigation was well less than half a day with much of it taken up by discussion about the substantive issues between the parties.
- [17] The Employment Court hearing traversed identical issues to those raised in the Authority.
- [18] The parties' settlement incorporated into the Authority's consent determination (of 8 April 2008, WA 38/08) agreed that costs would lie where they fell in respect of the substantive application.
- [19] The costs actually incurred by the union are not clear.
- [20] Having regard to the above costs should lie where they fall in respect of the preliminary issue or – having regard to the size of the union's submission and the time taken – be no more than \$750.

## **Discussion and Findings**

- [21] This matter is not a test case (see *NZ Tramways etc* [2007] 1 ERNZ 667, above) and there are no other reasons why costs should not follow the event as they did in the Employment Court hearing: *Da Cruz* (above).
- [22] The preliminary investigation was concluded in less than half a day, particularly as discussion anticipated the substantive issue.

[23] Much of the work undertaken by the union for the Authority's investigation was put to good use in the Employment Court, for which costs were awarded.

[24] Having regard to the above I am satisfied an award of costs of \$1,000 to the union is appropriate.

**Determination**

[25] The companies are, jointly and severally, to pay to the union costs of \$1,000 (one thousand dollars).

**Denis Asher**

**Member of the Employment Relations Authority**