

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 272A/09
5165384

BETWEEN NEW ZEALAND DAIRY
 WORKERS' UNION INC
 Applicant

AND OPEN COUNTRY CHEESE
 COMPANY LIMITED
 Respondent

Member of Authority: Marija Urlich

Representatives: Helen White, Counsel for Applicant
 Graeme Malone, Counsel for Respondent

Submissions received: 27 August 2009, from Applicant
 4 September 2009 from Respondent

Determination: 8 October 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 11 August 2009 (AA272/09) I found OCC had unreasonably denied access to the DWU and awarded a penalty to be paid to the Crown. Costs were reserved. Memoranda have been filed setting out the parties' respective positions in respect of costs.

[2] In her memorandum to the Authority Ms White advises the DWU's costs in relation to this matter total \$3,800 plus GST. Disbursements have not been separately quantified. She seeks an order for the full recovery of those costs on the following grounds:

- The Authority found in favour of the DWU that breaches of access rights had occurred significant enough to justify the award of a penalty;
- The DWU has incurred the cost of litigation without remedy or compensation;

- The ongoing nature of the parties' relationship weighs in favour of an award of costs; and
- The DWU put OCC on notice at the earliest stage that it was in breach and proceedings would be filed.

[3] Mr Malone submits that an award of costs of no more than \$1500 is warranted given:

- The investigation meeting was of short duration (a few hours) and involved two key witnesses;
- The purpose of costs is not to punish or reflect disapproval for conduct which is not related to proceedings or which unnecessarily increased costs, that is the purpose of any penalty award;
- OCC's conduct did not unnecessarily increase the cost of proceedings; and
- Notwithstanding the Authority's findings, OCC held genuine concerns over the manner in which access might be exercised, it expressed those views and sought guidance as to the future.

Determination

[4] *PBO Ltd v Da Cruz*¹ sets out the appropriate principles to be applied by the Authority in exercising its costs discretion.

[5] It is usual that costs follow the event. I find that an award of costs is warranted in this matter. Grounds for indemnity costs do not exist. I accept Mr Malone's submission that the purpose of costs is not to punish or express disapproval for conduct which does not relate to the proceedings or unnecessarily increases costs. I accept this is not the case here; the alleged breaches of access rights were before the Authority for investigation and the parties participated appropriately in that process.

[6] In the circumstances, in particular the nature of the matters before the Authority and the short hearing time involved, and accepting \$3000 as a usual notional daily rate in the Authority, I set the costs award at \$2000.

¹ [2005] 1 ERNZ 808

[7] Open Country Cheese Company Limited is ordered to pay \$2000 to the Dairy Workers' Union in costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Marija Urlich

Member of the Employment Relations Authority