

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 81A/10
5157341

BETWEEN BRENDAN NEIL GRAY
 Applicant

A N D BEST REMOVALS OTAGO
 LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: Anne-Marie McNally, Counsel for Applicant
 Diana Hudson, Counsel for Respondent

Submissions Received: 28 April 2010 from Applicant
 27 April and 29 April 2010 from Respondent

Determination: 30 April 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 30 March 2010 I upheld Mr Gray's claim that his former employer withheld wages and holiday pay, but dismissed his claims of unjustifiable constructive dismissal, unjustified disadvantage and arrears of weekly wages relating to a contractually agreed weekly minimum. Costs were reserved with the observation that each side had had some success and any claim for costs should be made in the usual manner.

[2] I now have the respondent's claim for an award of costs against the applicant (27 April 2010), the applicant's reply and his own claim for an award of costs in his favour (28 April 2010), and a reply to that claim from the respondent (29 April 2010). This determination resolves the disputed question of costs.

[3] For the respondent, it is said that the applicant made the matter unnecessarily complicated and caused it extra costs because matters not raised in the statement of problem were canvassed in his statement of evidence. The respondent had to prepare

a response to those matters that included examining payroll records for the period of the applicant's employment. It is also said that the constructive dismissal allegation and claim for arrears on weekly wages was clearly unsustainable and the applicant put the respondent to unnecessary cost in defending both those claims. In addition, during the investigation meeting counsel for the applicant characterised the unlawful deduction aspect of the problem as a personal grievance in order to open up the possibility of compensation as a remedy. I am referred to *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808 for relevant principles.

[4] There is merit in the respondent's contention that the constructive dismissal claim and other matters complicated unnecessarily what was otherwise a straightforward application of the Wages Protection Act principles' effect on provisions in the employment agreement against a largely undisputed factual scenario. If the respondent had paid or offered to pay the money that it unlawfully withheld from the applicant, it is very likely that I would have been persuaded to make an award of costs in its favour.

[5] The position for the applicant is that the respondent unlawfully withheld his holiday pay at the termination of his employment. That required him to initiate proceedings to recover the unlawful deduction in which he was wholly successful. The applicant says that the other matters were reasonably brought, without malice, and occupied very little time.

[6] I do not accept that these other matters were reasonably brought or that they occupied very little time. The major component of the other matters was the constructive dismissal claim and that required the respondent to properly present evidence about the sequence of events leading up to and following the applicant's resignation. I also accept that the arrears of weekly wages matter required careful preparation. It is unfortunate that the applicant chose to complicate what was otherwise a straight forward case of resolving limited factual disputes and applying settled legal principles to the terms of an employment agreement. If the applicant had only advanced the Wages Protection Act matter I would have had no hesitation in making an award of costs in his favour.

[7] Standing back, this matter was not resolved by the parties and required investigation by the Authority because of the respondent's unlawful deduction from the applicant's final wages. That was the genesis of the matter. Proceedings limited

to that point may have been resolved and certainly would have been dealt with in much less time but for the additional unmeritorious claims made by the applicant. The respondent makes the point that the applicant is effectively indemnified by his union so was able to raise the unmeritorious matters without risk. However, I have no information about the arrangements between EPMU and Mr Gray. I consider that the just course of action is to leave costs to lie where they fall.

Philip Cheyne
Member of the Employment Relations Authority