

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

AA 249A/10  
5155251

BETWEEN                      David Page  
   Applicant

AND                              New Zealand Language Centres  
   Limited (formerly GEOS (New  
   Zealand) Limited)  
   Respondent

Member of Authority:        Denis Asher

Representatives:             Richard Harrison for Mr Page  
   Dean Kilpatrick for the Company

Submissions received:        19 August 2010

Determination:                24 September 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     Firstly, I note here the delay in this costs determination occasioned by my absence on annual leave.

[2] In my determination dated 25 May 2010 (AA 249/10) I found in favour of Mr Page's claims, including the claims that he had been unjustifiably disadvantaged and unjustifiably dismissed. I also dismissed the respondent's (the Company's) counter-claims against Mr Page.

[3] Costs were reserved.

### **Mr Page's Costs Submissions Summarised**

[4] In costs submissions received on 3 August 2010 counsel for Mr Page, Mr Richard Harrison, noted that his client had succeeded with his claims and that the Company's counter-claims had proven entirely unsuccessful.

[5] He sought a contribution to his client's costs which amount to \$20,771.44, excluding mediation.

[6] These costs were incurred including filing the original statement of problem, communicating with the respondent's solicitors, etc, the Authority's investigation over two full days as well as a significant portion of time required to respond to the Company's counter-claim.

[7] Because of the volume of evidence provided by the respondent, some of which was unnecessary and which unduly extended the hearing time and costs, the ongoing absence of wage and time records despite repeated requests (and the absence of which made the task of presenting the applicant's claim more difficult and time consuming), the entirely unsuccessful counter-claim and the finding Mr Page's dismissal was seriously lacking in due process, the applicant seeks a contribution toward his costs of 66%, or \$12,282.90.

[8] By email on 22 September Mr Harrison confirmed no submissions in reply would be filed.

## **The Company's Costs Synopsis Summarised**

[9] The matter is subject to an application for stay of proceedings before the Employment Court.

[10] The order of costs sought is well above normal awards in the Authority.

[11] Cases on costs are well known and the principles are summarised in *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

[12] The evidence provided by the respondent succinctly outlined, as far as possible, the expenses in question and provided the applicant with an opportunity to respond fully.

[13] The lack of detailed records was a direct result of Mr Page's failure to properly account for and record expenses incurred by him.

[14] The Company's expenses claim was genuinely raised.

[15] The matters relied on by the applicant do not justify the costs sought and do not justify the Authority departing from well established principles for costs awards.

[16] Mr Page was able to establish any amount unpaid as claimed through IRD records. This has been paid by the respondent. The absence of remuneration records in no way increased the time required by Mr Page's counsel to prepare for the Authority investigation.

[17] Overall the applicant has not provided the Authority with any factual basis for the costs claimed.

## **Discussion and Findings**

[18] The parties are effectively agreed that the Authority's discretion with which to award costs is now well settled and typically follows the event: *Da Cruz* (above).

[19] I note here that, in its judgement dated 14 September 2010 ([2010] NZEMPC 124, ARC 68/10), the Employment Court granted an interim stay of enforcement for 28 days of my substantive determination on various grounds, including payment of various sums to Mr Page and to the Court and the provision of certain financial information.

[20] The Company does not seek it, nor is any basis provided in the Court's interim judgement, to delay making a costs determination in respect of my substantive determination.

[21] Mr Page was entirely successful in his application to the Authority, and in his defence of the Company's counter-claim.

[22] The investigation was incomplete after two-full days: the parties agreed that outstanding matters would be dealt with by way of affidavits and submissions.

[23] I am satisfied that, in all the circumstances and in particular having regard to the size of the matters Mr Page was obliged to bring and defend as reflected in the extent and duration of the investigation, a costs award of \$12,000 against the Company along with a direction to pay the \$70 filing fee are entirely appropriate.

### **Determination**

[24] The Company is to pay to Mr Page as a contribution to his fair and reasonable costs \$12,000 (twelve thousand dollars) and the \$70 (seventy dollar) filing fee.

**Denis Asher**

**Member of the Employment Relations Authority**