

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

5162612  
WA85A/10

BETWEEN                      NEW ZEALAND PUBLIC  
   SERVICE ASSOCIATION  
   INCORPORATED  
   Applicant

AND                              CHIEF EXECUTIVE, INLAND  
   REVENUE DEPARTMENT  
   Respondent

Member of Authority:      G J Wood

Representatives:            Peter Cranney for the Applicant  
   Susan Hornsby-Geluk for the Respondent

Submissions Received:     By 14 September 2010

Determination:              23 September 2010

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In my substantive determination I dismissed what was effectively a dispute brought by the PSA against the IRD. The dispute was about whether or not the PSA's agreement was required before the IRD could institute (under its management of change and remuneration systems) new salary ranges for new positions, particularly where existing staff were redeployed to those positions.

[2]     The IRD seeks an award of costs of \$5,189.50 plus GST, being one third of its actual costs of \$15,568.50 plus GST. It claims greater costs than would be usual in the Authority because of changes to the nature of the PSA's claim, which it had difficulty in following, and its failure to provide submissions within the timeframe.

[3] In response, the PSA claims that costs should lie where they fall, given there was a genuine ambiguity in the collective agreement and costs should not be awarded against any party testing that ambiguity in the Authority. In its view, the main issue for determination was raised at the first date of investigation, and then a further date was provided so that the parties could make further submissions on that issue. It claims that it was the IRD that was responsible for complicating matters and for leading evidence at the second investigation meeting that was unnecessary. It also noted that most of the costs were incurred after the initial meeting, when the issues did not change. In the alternative to no costs being awarded, the PSA claims that a costs award of between \$1,500 and \$2,500 would be the appropriate tariff.

[4] In response, Ms Hornsby-Geluk sought to distinguish judgments concluding that costs should rarely be awarded in proceedings relating to a dispute regarding the interpretation or application of a collective agreement because:

- the original claims are much wider than that;
- evidence was required to negate the other claims;
- the parties had always operated over many years with an understanding of the contractual provisions that was consistent with the Authority's determination; and
- many of the matters could have resolved by way of settlement under the new collective agreement then being negotiated.

[5] This matter commenced with a one day investigation meeting. At its conclusion IRD was granted leave to provide further submissions on the key issue, which had only that day been properly identified. On IRD's application an extra investigation meeting was held so as to allow IRD to more fully respond to the key issue, including leading new evidence on matters such as the PSA's previous acceptance of the practice now challenged.

[6] I conclude that while the matter was decided as a genuine dispute, it was not raised in that way. A number of other claims were made, although those were withdrawn prior to the second investigation meeting.

[7] I accept that the IRD should have been on notice as to what the key remaining issue was, given that it was raised at the first investigation meeting, albeit at its

conclusion. On the other hand, the PSA mounted a full frontal attack on the IRD's right to manage, which it had acquiesced to for many years, and this did require significant attention by the IRD. The costs associated with such a defence are a matter for it.

[8] Whatever level of resources are used to defend such claims, the Authority usually determines matters on a tariff-based approach. Here, I do not accept, for the reasons given above about the changing nature of the claims, that costs should lie where they fall. However, given that by the end of the process the matter was essentially analysed as a dispute and the issues were relatively clear to the IRD, even if not palatable to it, then costs should be set at a modest level.

[9] I therefore order the applicant, the New Zealand Public Service Association Incorporated, to pay to the respondent, the Chief Executive of Inland Revenue Department, the sum of \$2,000 in costs.

**G J Wood**  
**Member of the Employment Relations Authority**