

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA51A/10
5277449

BETWEEN	NEW ZEALAND TRAMWAYS AND PUBLIC PASSENGER TRANSPORT EMPLOYEES UNION INCORPORATED First Applicant
AND	DAVID JOHN DUFFELL Second Applicant
AND	MANA COACH SERVICES LIMITED Respondent

Member of Authority: G J Wood

Representatives: Kevin O'Sullivan for the Applicants
Angela Walker for the Respondent

Submissions Received: By 24 September 2010

Determination: 28 September 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination I concluded that Mr Duffell was properly paid as he became party solely to the collective employment agreement once he joined the first applicant union, rather than maintaining the superior conditions he previously had under an individual employment agreement.

[2] On behalf of the respondent, Mana Coach Services, Ms Walker submitted that the applicants knew that any potential gain was minimal and that the outcome of the case was obvious. Ms Walker also submitted that the applicants chose to reserve their key submissions until their memorandum in reply, which led to additional costs that

could have been avoided. The respondent seeks indemnity costs of \$2,380 plus GST as a result.

[3] On behalf of the applicants, it was submitted that given that there was a genuine dispute, no costs should be awarded. In the alternative it was submitted that this was not a case for an award of full costs, as it was basically a genuine dispute about the operation of the collective employment agreement.

[4] The problems between the parties did involve issues other than a dispute over the interpretation of the collective agreement (which I accept should usually lead to no award of costs being made), however. For instance, in the statement of problem it was claimed that the respondent unilaterally transferred Mr Duffell from his individual agreement to the collective agreement. Another fact militating against costs lying where they fall is that the main submissions from the applicants came in as submissions in reply, leading to additional costs being unnecessarily being incurred by Mana Coach Services.

[5] The matter was otherwise dealt with very effectively and efficiently, largely as a dispute. Costs therefore should be quite minimal. There are no grounds for indemnity costs as I accept there was a genuine issue between the parties to be determined.

[6] I therefore order the applicants, New Zealand Tramways and Public Passenger Transport Employees Union Incorporated and David John Duffell, to pay to the respondent, Mana Coach Services Limited, on a joint and several liability basis, the sum of \$500 in costs.

G J Wood
Member of the Employment Relations Authority