

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 129
5321286

BETWEEN

SERVICE & FOOD
WORKERS UNION NGA
RINGA TOTA INC
Applicant

AND

PACIFIC FLIGHT CATERING
LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Submissions Received 7 and 15 February 2011

Determination: 31 March 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] The Service & Food Workers' Union Nga Ringa Tōta Inc (SFWU) has applied to the Authority for an award of costs from Pacific Flight Catering Limited (PFC) following a determination issued by the Authority on 19 January 2011; [2011] NZERA Auckland 23.

[2] Following an investigation into an employment relationship problem between the parties the Authority determined that PFC had breached the statutory obligation of good faith that applies to parties during bargaining for a collective agreement. The Authority found that through its conduct PFC had failed to recognise the role and authority of SFWU as the representative of employees who were members of that Union, as the company was required to do by s 32(1)(d)(i) of the Act. The Authority also found that by its conduct PFC had acted in a way that was likely to undermine the bargaining for a collective agreement and undermine the authority of SFWU in that bargaining, contrary to s 32(1)(d)(iii) of the Act.

[3] A declaration was given accordingly and a penalty of \$6,000 was ordered against PFC, half of which was to be paid to SFWU.

[4] The Authority declined to order compliance as sought by the Union because a written undertaking had been given by PFC before the investigation meeting not to engage in certain conduct. Leave was reserved for SFWU to apply with urgency for an order in the event it considered those undertakings were not being met.

[5] Memoranda on the question of costs were received from the parties in February 2011.

[6] In its memorandum dated 7 February 2011 and filed in the Authority that day, SFWU sought an award of \$4,000, assessed as 2/3 of actual costs of \$5,500. It was submitted that \$4,000 was only slightly more than the Authority's notional daily tariff, an indicator the Authority often has regard to when fixing awards of costs.

[7] In its memorandum in reply filed on 15 February 2011, PFC opposed any consideration being given by the Authority to the costs application as it had been filed outside the time allowed. In the alternative PFC submitted that the amount of \$4,000 sought was excessive and that an appropriate costs award was \$2,000, for reasons given by the company.

[8] When clear directions have been given by the Authority with regard to applying for costs including the time inside which that must be done, it is a concern to the Authority if those directions are not complied with. It is a greater concern when no attempt is made to seek an extension of time for filing costs applications when that becomes necessary and when no explanation is given, as in this case, why the timetable was not complied with.

[9] The Authority gave leave for SFWU to apply for costs in writing "within 14 days of the date of this determination". As 19 January 2011 was clearly given on its front page as the date of the determination, 14 days (starting from the day after 19 January) expired at the close of 2 February. SFWU's costs submission was filed five days late.

[10] No extension of time was applied for and no explanation for the delay was given by the Union in its costs memorandum. If there is an explanation and it has

something to do with January being a time of the year when many people are on holiday, that information was capable of being communicated to the Authority.

[11] The Authority and PFC are left without any explanation for the failure by SFWU to observe the timetable set for the costs application. This is an unsatisfactory situation and suggests that the SFWU which has sought and obtained assistance from the Authority nevertheless has taken little notice of its directions.

[12] In the circumstances I agree with the submission of PFC that the application should not be accepted. I decline to consider it, a course that has been taken previously by the Authority where parties have not met timetables directed by the Authority and have not applied for an extension of those. It should be well known to parties such as SFWU which are regularly involved in Authority applications, that if extensions of time are sought usually they will readily be granted.

[13] No order for costs is made.

A Dumbleton
Member of the Employment Relations Authority