

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2011] NZERA Wellington 109  
5314027

BETWEEN	NZ TRAMWAYS AND PUBLIC PASSENGER TRANSPORT AUTHORITIES EMPLOYEES IUOW (WELLINGTON BRANCH) Applicant
AND	MANA COACH SERVICES LIMITED Respondent

Member of Authority: P R Stapp

Submissions Received by: 4 May 2011 from the Applicant  
11 May 2011 from the Respondent

Determination: 17 June 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] The employment relationship problem lodged in the Authority on 29 July 2010 did not involve an investigation meeting before it was withdrawn on 24 February 2011. The respondent seeks costs of \$1,500.

[2] The applicant claimed that costs should lie where they fall.

[3] There was no investigation meeting date arranged. It took seven months before the application was withdrawn. In the meantime the respondent prepared a draft statement of agreed facts for an investigation meeting, if it was needed.

**Determination**

[4] I hold that this matter should have involved minimal costs because there was no investigation meeting and no written statements of evidence prepared. I accept that other costs have been incurred by the respondent (statement in reply, telephone

conferences, advice and discussions with the client), but the costs for these would be expected to be incurred without recovery. In this instance as they also related to mediation and there being no investigation meeting it is not appropriate to include them, I hold. Also, it was submitted by the respondent that I make an inference that the application was made for strategic purposes around collective bargaining, and once the agreement on a collective agreement was reached the statement of problem was withdrawn. I have decided not to draw such an inference and in any case costs are not a penalty, but to reimburse a party that has been put to unnecessary costs. I am not satisfied that the extras claimed should be included on the basis of an inference that has not been established.

[5] I conclude that the applicant did put the respondent to unnecessary costs having regard to the respondent's involvement in drafting a statement of agreed facts and giving it to the applicant for consideration. That has resulted in costs being incurred by the respondent, but applying a tariff approach this must be at the lower end of the scale considering there had been no timetable and no other usual preparation for an Authority investigation meeting. The costs for the preparation of the draft statement of agreed facts were reasonably incurred by the respondent because the statement was to be helpful for an investigation and anticipated given the Authority's involvement in signalling an intention to proceed. Various sums between \$200 at the lower end of the scale and up to \$1,000 have been applied for different stages of preparation and where there has been no investigation meeting and an application withdrawn. Each case is dealt with on their own merits. Thus, for this matter my assessment is in line with the various sums ordered and that there has been an actual cost invoiced.

[6] I assess a level of costs appropriately at \$300 to contribute towards the respondent's costs.

**Order of the Authority**

[7] The NZ Tramways and Public Passenger Transport Authorities Employees IUOW (Wellington Branch) is to pay Mana Coach Services Limited the sum of \$300 in costs.

P R Stapp  
Member of the Employment Relations Authority