

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 176
5322204
5332511

BETWEEN	LEE HAYLLAR Applicant (5332511)
A N D	ANDRE MATENE Applicant (5322204)
AND	THE GOOD TIME FOOD COMPANY LIMITED Respondent

Member of Authority:	G J Wood
Representatives:	Alan Cressey for the Applicants Gary Tayler for the Respondent
Investigation Meeting:	By way of submissions received
Submissions Received:	By 11 October 2011
Determination:	11 November 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In my previous determination, [2011] NZERA Wellington 149, I removed the employment relationship problems between the parties to the Employment Court in their entirety for it to investigate, hear and determine the matter without the Authority investigating them. I did, however, reserve costs.

[2] Mr Taylor has made a comprehensive application for costs. The Authority only has the residual jurisdiction to deal with costs on the removal application. Any preparation for matters relating to the Authority's substantive investigation into the matters in question, which are now to be heard and decided by the Court, are for the Court to determine.

[3] By contrast, Mr Cressey considers that costs should be reserved pending the Court's judgment. In the alternative he seeks costs of \$285.20, plus disbursements of \$306.66, for the applicants' successful application for removal.

[4] I accept, however, that this is a matter for a costs award in favour of the respondent because, given that the application was so late, Mr Cressey was in effect seeking an indulgence on behalf of his clients. To ask for removal within a week of an investigation meeting can only have committed the Good Time Food Company to additional costs.

[5] The hearing of the application itself, however, was conducted during a commendably brief period, the bulk of which constituted a telephone conference call between the parties and the Authority. However, there must have been some preparation required by the Good Time Food Company in order to be able to respond appropriately to the application.

[6] In this case, a total period of around two hours, which would normally lead to a finding of a costs award of around \$400, is a reasonable contribution to the Good Time Food Company's costs. There were no submissions made that there were any particular additional costs that the Good Time Food Company suffered through having the matter removed so close to an investigation meeting. As indicated earlier, costs do not extend to the evidence that had been prepared, because that evidence may still be used, and any costs implications can be addressed by the Court later.

[7] I do not accept that the form or method of the application constitutes exceptional circumstances in this case, so that the applicants may be required to pay these costs personally, despite them being legally aided. That is particularly so when the application was successful. There were certainly no breaches of any duties owed by the applicants to the Authority or to the Good Time Food Company, when the result of the application is considered. It is appropriate, however, to inform the Legal Services Agency that, were the applicants not legally aided, the Authority would have ordered costs totalling \$400 against the applicants and in favour of the respondent.

G J Wood
Member of the Employment Relations Authority