IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

[2012] NZERA Christchurch 51
5314938

	BETWEEN	NIGEL McMILLAN & ORS Applicants
	A N D	AIR NELSON LIMITED Respondent

Member of Authority:	David Appleton
Representatives:	Greg Lloyd, Counsel for Applicants David France, Counsel for Respondent
Submissions Received:	29 February 2012 from Respondent 19 March 2012 from Applicants
Date of Determination:	23 March 2012

COSTS DETERMINATION OF THE AUTHORITY

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[1] By way of a determination dated 17 January 2012, I found that Mr Grayer succeeded in his claim but that the remaining 7 applicants failed. The respondent seeks a contribution to its costs and the applicants ask that costs should lie where they fall.

[2] I agree with counsel for both parties that the matter was conducted in an efficient and expedient manner and, despite hearing from 7 witnesses on the day of the Investigation Meeting, we were able to conclude the investigation in less than a full day.

[3] Counsel for the respondent points out that the applicants lodged an amended statement of problem which introduced an additional argument, which needed to be addressed by the respondent. However, this amended statement of problem was lodged reasonably far in advance of the investigation meeting so as not to prejudice the respondent unduly, and raised an argument which, whilst it ultimately failed, was one that was not wholly without merit. Both parties made amendments to their briefs of evidence fairly late in the proceedings, but not unreasonably in my view.

[4] Counsel for the respondent has also pointed out that, whilst one applicant succeeded, seven failed. However, I agree with counsel for the applicants that it would be artificial to have regard solely to the number of applicants, and that the arguments of the seven were essentially identical. In that respect, it can be said that one argument failed and one succeeded.

[5] Finally, it is the case that the dispute arose because of a mistake made by the respondent regarding paid meal breaks, and that the seven unsuccessful applicants were not unreasonable in seeking to have their concerns in that regard investigated.

[6] With all this in mind, and applying the usual principles promulgated in *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808, I am satisfied that this is a case where costs should lie where they fall.

David Appleton
Member of the Employment Relations Authority