

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 327
5341970

BETWEEN	SERVICE & FOOD WORKERS' UNION NGA RINGA TOTA INC First Applicant
AND	VA'A NGAKAU Second Applicant
AND	SONNY TUITI Third Applicant
AND	KEVIN MEHANA Fourth Applicant
AND	SALA PARKER Fifth Applicant
AND	PACIFIC FLIGHT CATERING LIMITED First Respondent
AND	PRI FLIGHT CATERING LIMITED Second Respondent

Member of Authority: Alastair Dumbleton

Submissions Received 25 June 2012, from applicants

Determination: 18 September 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 13 June 2012 – [2012 NZERA Auckland 200] – the Authority ordered the first respondent Pacific Flight Catering Ltd to pay a total of \$20,000 as penalties for breach of s 130 of the Employment Relations Act 2000. That provision requires an employer upon request by an employee to provide access to, or a copy of, or an extract from, the wages and time record employers must keep in relation to any employee.

[2] Costs were reserved for written submissions, with any application to be made by the Service & Food Workers Union (SFWU) and employee applicant parties within 14 days of the date of the determination. Any reply by the respondent companies was required to be filed within a further 14 day period.

[3] No costs submissions were received in response to the applicants' submissions filed on 25 June 2012. It is noted that the respondents challenged to the Employment Court the Authority's determination of 13 June and the case is awaiting hearing.

[4] An award is sought by the SFWU to reimburse some of its costs and expenses incurred in representing the second to fifth applicants who are members of the union. I accept that as well as being a party the SFWU has standing as a representative to make this application.

[5] The quantum of costs is based on the number of days of investigation meetings, which occurred on 30 June and 21 July 2011 and 11 April 2012. In total the meetings occupied two days.

[6] Counsel Mr Oldfield has referred to the current daily tariff as being \$3,500 which the SFWU generously has reduced by 50% to recognise the lower cost of his involvement as in-house union counsel. He seeks an adjustment up from \$1,750 to \$2,500 to take account of the way the case was conducted by the respondents, which I agree, unnecessarily increased the time needed to investigate this matter.

[7] I therefore accept that \$2,500 is an appropriate amount for the meetings of 30 June and 21 July 2011.

[8] The legal cost incurred for the meeting of 11 April 2012 were increased because the applicants' needed to engage Mr Mitchell as counsel, Mr Oldfield having been summonsed by the respondents to give evidence at that meeting. This necessitated the engagement of outside counsel at short notice, for which services Mr Mitchell's fee was \$2,000 for the single day of the meeting. I agree with the submission that this is a modest and reasonable amount which in the circumstances should be fully reimbursed.

[9] I therefore consider that the total amount of costs claimed of \$4,500 is reasonable as a contribution to actual costs. It is well below the \$7,000 tariff for two days of investigation meeting (made up of two half days and one full day).

[10] With regard to disbursements, the filing fee of \$71.56 has been claimed and also witnesses expenses for two witnesses, including Mr Oldfield, who were summonsed by the respondents. These fees and expenses are reasonable and must also be paid by the respondents.

Determination

[11] In the exercise of its discretion, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, the Authority orders the respondents Pacific Flight Catering Ltd and PRI Flight Catering Ltd to pay the first applicant Service & Food Workers Union \$4,500 in costs, \$71.56 fees and \$82.60 witnesses expenses.

A Dumbleton
Member of the Employment Relations Authority