

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2015] NZERA Christchurch 137  
5547991

BETWEEN SOUTH PACIFIC MEATS  
LIMITED  
Applicant

A N D NEW ZEALAND MEAT  
WORKERS AND RELATED  
TRADES UNION INC  
Respondent

Member of Authority: James Crichton

Representatives: Rachel Webster, Counsel for the Applicant  
Peter Churchman QC, Counsel for the Respondent

Submissions Received: 3 September 2015 on behalf of the Applicant  
21 August 2015 on behalf of the Respondent

Date of Determination: 15 September 2015

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1] I issued my determination in this matter on 22 July 2015 as [2015] NZERA Christchurch 102. In my decision, I reject South Pacific Meat's application and find exclusively for the respondent Union.

[2] Costs were reserved in that substantive decision.

**The claim for costs**

[3] As the successful party, the respondent Union seeks indemnity costs. It had foreshadowed its intention to seek indemnity costs at an early stage.

[4] The Union relies on its argument that the application by South Pacific Meats was completely misconceived, a view which I agreed with in the substantive determination.

[5] Moreover, in the telephone conference that I held with counsel on 14 April 2015, I had signalled to counsel for South Pacific Meats that I thought its case was without any prospect of success because it sought relief which was ultra vires the Authority's remit. That being the position, it followed that by proceeding, South Pacific Meats ran the risk of precisely the costs award it is now facing.

[6] I encouraged counsel for the applicant to seek further instructions but in the result South Pacific Meats determined to proceed and my subsequent determination did no more than repeat my earlier intimation.

[7] I am advised by the respondent Union that attempts were made to settle costs without success and accordingly the application falls for the Authority to make orders. Full indemnity costs are sought on the footing that the proceedings were said to be frivolous and vexatious from the start, South Pacific Meats was advised that full indemnity costs would be pursued if it continued and it is on that footing then that costs of \$3,496 exclusive of GST are sought.

### **The response**

[8] South Pacific Meats seeks a stay in the costs matter pending a decision of the Employment Court on a challenge to my substantive determination.

[9] South Pacific Meats says that the respondent Union seeks indemnity costs because of my determination that I do not have jurisdiction to deal with the South Pacific Meats claim.

### **Determination**

[10] The law on costs fixing in the Authority is well settled and has recently been confirmed again by the full Court in *Davide Fagotti v. Acme & Co Ltd* [2015] NZEmpC 135. Those principles need not be recited again here.

[11] The first question I need to determine is whether the application for a stay in the fixing of costs in the Authority has any merit. I conclude that it does not; the Authority's invariable practice is to fix costs at the conclusion of its proceeding,

whether or not a matter has gone on challenge. There is no particular reason for this case to be treated any differently.

[12] The fact that the Union has sought indemnity costs is not a unique factor but simply evidence of its conviction (a conviction I agree with) that I have no jurisdiction to provide the relief sought and that therefore the application made by South Pacific Meats is ultra vires. Moreover, the Union made it abundantly clear at an early stage in the proceeding that it regarded South Pacific Meats' claim as frivolous and vexatious and that it would be seeking full indemnity costs in consequence.

[13] Given the nature of my conclusion, that there was no basis on which I could legally contemplate the relief sought, the fact that I signalled during the telephone conference on 14 April 2015 that that was my provisional view and the Union had long maintained that was its view, South Pacific Meats knew full well that it was standing into danger by persevering with the claim, a claim which the Union had resisted by, amongst other things, making it plain that indemnity costs would be sought.

[14] In those circumstances, I am satisfied the proper course of action is to direct that South Pacific Meats pays to the Union full indemnity costs in the sum of \$3,496 exclusive of GST.

James Crichton  
Member of the Employment Relations Authority