

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2021] NZERA 6  
3098073

BETWEEN

WADE VERMUELEN  
Applicant

AND

MIKE'S TRANSPORT  
WAREHOUSE LIMITED  
First Respondent

MODERN TRANSPORT  
ENGINEERS LIMITED  
Second Respondent

Member of Authority: Vicki Campbell

Representatives: Adam Mapu & Nadia Tu'itahi, advocates for Applicant  
Truc Tran, counsel for Respondent

Submissions received: 17 December 2020 from Applicant  
22 December 2020 from Respondent

Determination: 12 January 2021

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A. Mike's Transport Warehouse Limited and Modern Transport Engineers Limited are ordered to jointly and severally pay to Mr Vermuelen the sum of \$3,500 as a contribution towards his costs within 28 days of the date of this determination.**

[1] Two determinations have been issued in relation to Mr Vermuelen's application to the Authority.<sup>1</sup> The first determination dealt with Mr Vermuelen's application for interim reinstatement which was declined. The second dealt with his substantive claims.

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<sup>1</sup> *Vermuelen v Mike's Transport Warehouse Ltd* [2020] NZERA 145; *Vermuelen v Mike's Transport Warehouse Ltd & 1 Or* [2020] NZERA 500.

By the time the substantive claims were investigated and determined the second respondent had been included in his application and Mr Vermuelen's application for permanent reinstatement had been withdrawn.

[2] Costs on the interim application were reserved pending the determination of the substantive claims. In the substantive determination I reserved costs and invited the parties to resolve the issue between them. The parties have been unable to resolve the matter and they have lodged memoranda seeking a determination of the issue of costs.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.<sup>2</sup> The principles applying to costs are well settled and do not require repeating.<sup>3</sup>

[4] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.<sup>4</sup>

[5] With the consent of the parties the interim application was dealt with on the papers before the Authority. It did not require the attendance at an investigation meeting, although witnesses who had provided written statements were contacted to enable them to affirm that the statements provided by them were true and correct.

[6] The substantive determination was investigated through a meeting held via Zoom. The investigation meeting took less than one day.

[7] There was a mixed measure of success by the parties. Mike's Transport Warehouse Limited (MTW) was successful in defending Mr Vermuelen's application for interim reinstatement and Mr Vermuelen's claim that he had been unjustifiably dismissed on 5 March 2020.

[8] Mr Vermuelen was successful in his claim that he had been unjustifiably disadvantaged during his employment with MTW and was successful in his claim that

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>3</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

<sup>4</sup> Practice Note 2, Costs in the Employment Relations Authority.

he had been unjustifiably dismissed from his employment with Modern Transport Engineers Limited (MTE).

[9] The situation of mixed success has been examined by the Court in *Coomer v JA McCallum and Son Limited*.<sup>5</sup> Ultimately I must stand back and look at things in the round.<sup>6</sup> Having done so Mr Vermuelen must be considered the successful party. His key claim was that he had been unjustifiably dismissed and he was successful in that claim.

[10] Mr Vermuelen seeks a contribution of \$9,000 towards his costs of \$9,640. I am satisfied the costs incurred by Mr Vermuelen were reasonable. Taking into account the mixed success of both parties I am satisfied Mr Vermuelen should be awarded a contribution to his costs in the sum of \$3,500. This sum recognises Mr Vermuelen's success in his substantive application.

[11] There was no behaviour or conduct on the part of MTW or MTE warranting an uplift in the daily tariff.

[12] Mike's Transport Warehouse Limited and Modern Transport Engineers Limited are ordered to jointly and severally pay to Mr Vermuelen the sum of \$3,500 as a contribution towards his costs within 28 days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority

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<sup>5</sup> *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

<sup>6</sup> *Ibid* at [43].