IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2022] NZERA 680
3189699

	BETWEEN	DEAN MARFELL Applicant
	AND	GLOBAL BUS VENTURES NZ LIMITED Respondent

Member of Authority:	Peter van Keulen
Representatives:	Jaslina Abdul Aziz, advocate for the Applicant Joseph Harrop, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions Received:	19 December 2022 from the Applicant 16 December 2022 from the Respondent
Date of Determination:	21 December 2022

COSTS DETERMINATION OF THE AUTHORITY

The employment relationship problem

[1] In September 2022 Dean Marfell lodged a statement of problem in the Authority seeking compliance orders and compensation from Global Bus Ventures NZ Limited.

[2] The basis for Mr Marfell's claim was that Global Bus had not complied with its obligations under a record of settlement between the parties. In particular, he said Global Bus had not met with him to discuss potential overtime work.

[3] Global Bus responded to the statement of problem lodging a statement of reply in October 2022. Global Bus accepted it had not met with Mr Marfell as it was obligated to do but it said Mr Marfell had failed to respond to it regarding the meeting so it had been unable to schedule a time and date for it.

[4] In a case management conference held on 28 November 2022 the parties agreed, through their representatives, that the required meeting would be held and they would then report back to the Authority regarding Mr Marfell's claim and whether it would be continued.

[5] I note here that the compensation aspects of Mr Marfell's claim appeared to be problematic in terms of whether the Authority had jurisdiction to grant those remedies given that the claim was based on a record of settlement. The advocate for Mr Marfell agreed to consider that and discuss it further with Mr Marfell in terms of ascertaining if he wished to continue with his claim once the required meeting was held.

[6] On 13 December 2022 the advocate for Mr Marfell lodged a memorandum in the Authority advising that the required meeting took place on 30 November 2022. However, it appears a resolution over Mr Marfell recommencing overtime work was not agreed. Notwithstanding this lack of agreement Mr Marfell acknowledged the breach of the record of settlement had been remedied and therefore he wished to withdraw his claim.

[7] On 16 December 2022 counsel for Global Bus lodged a memorandum with the Authority. Counsel noted that Global Bus disagreed with the content of Mr Marfell's memorandum but acknowledged that Mr Marfell's claim was to be withdrawn. Counsel went on to advise that as Global Bus had been put to some expense in responding to Mr Marfell's statement of problem it sought costs against Mr Marfell and suggested $900.00 was an appropriate amount.

[8] On 19 December 2022 the advocate for Mr Marfell responded to the Global Bus memorandum stating that Mr Marfell disagreed with their memorandum setting out Mr Marfell's view that had he not lodged his statement of problem the required meeting would not have occurred. Therefore, Mr Marfell sought costs of $900.00 form Global Bus.

Analysis

Costs in the Authority

[9] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.[1]

[10] The starting point is that costs should follow the event.

[11] In this case the problem that I have is it is difficult to establish if one party was successful:

(a) Mr Marfell's position is that there was a breach of the record of settlement as Global Bus would not meet with him as required. In order to have that meeting he lodged a statement of problem seeking compliance. In the end a compliance order was not necessary as he was able to arrange and attend the meeting. But his point is, from his perspective the meeting would not have occurred if he had not lodged the statement of problem.

(b) Global Bus say it was always prepared to meet with Mr Marfell and he created the problems in arranging the meeting. The statement of problem was not necessary; had Mr Marfell simply responded to its requests to arrange a meeting then a claim need not have been lodged.

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[1] For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

[12] I am not satisfied that either party is blameless here in terms of the scheduling of the required meeting. There could and should have been better communication all round – this is something the parties need to focus on in terms of their ongoing relationship. Both seem to think they are in the right and I believe there is in fact fault on both sides.

[13] Therefore, I conclude neither party can claim a success here and there is no basis for costs to be awarded to one party over the other.

[14] Also, I note that it is possible that some personal subjective views of each other based on past behaviour are getting in the way of a productive working relationship. The parties need to move on from this and put their history behind them and focus on working together. My view is that a costs order one way or the other will not assist this.

Conclusion

[15] Weighing the above matters and observations my conclusion is that each party should bear its own costs.

[16] Costs shall lie where they fall.

Peter van Keulen
Member of the Employment Relations Authority