

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2011] NZEmpC 53  
ARC 96/08**

IN THE MATTER OF            a challenge to a determination of the  
Employment Relations Authority

AND IN THE MATTER OF an application for costs

BETWEEN                      NZ AMALGAMATED ENGINEERING  
PRINTING AND MANUFACTURING  
Plaintiff

AND                              SCA HYGIENE AUSTRALASIA  
Defendant

Hearing:            By memoranda of submissions filed on 12 and 13 July 2010

Judgment:        26 May 2011

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**COSTS JUDGMENT OF JUDGE B S TRAVIS**

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[1]     In my judgment of 10 June 2010 I reserved the issue of costs and invited the parties to attempt to reach agreement on the issues.

[2]     Counsel for the defendant filed a memorandum advising that no agreement could be reached and submitting that, in accordance with the principle that costs should follow the event, the defendant should be awarded the sum of \$10,000 as a reasonable contribution towards the costs actually incurred. The costs actually incurred were \$28,547.92 (inclusive of GST and exclusive of disbursements). The two-thirds usual starting point of costs actually and reasonably incurred, assuming the latter, would be just under \$19,000.

[3]     The matter had been set down for a one day hearing on 29 June 2009, preceded by the usual exchange of briefs of evidence and the preparation of documents. On the morning of the hearing the plaintiff's counsel was ill and unable

to proceed and the defendant had arranged witnesses to attend from Fiji and Australia to give evidence. The matter was adjourned and costs were reserved.

[4] The matter was finally heard on 26 April 2010. By that stage the parties had produced an agreed statement of facts which avoided the need for the two witnesses attending from overseas.

[5] The issue in the case was how particular employees should be paid for public holidays over the Christmas/New Year period when the enterprise in which they worked had been shut down.

[6] It gave rise to issues under the Holidays Act 2003. There was little direct guidance from previous authorities on the issue and, in the event, the defendant's submissions were accepted.

[7] The costs incurred by the defendant appear somewhat on the high side for a fixture which took two hours. Mr France, counsel for the defendant, cited an example of a case where the Court had awarded \$3,000 in costs for a two hour fixture: *NZ Tramway IUOW v Cityline (NZ) Ltd and ors.*<sup>1</sup>

[8] Ms McNally for the plaintiff submitted that there was an agreed statement of facts and a notable lack of complexity in the matter as it was finally presented. She also invited the court to conclude that the disputed issue was about the application of the Holidays Act to the collective agreement and was therefore in the nature of a test case and that the proper course was for costs to lie where they fell. She accepted that there could be some recognition of the initial adjournment of the proceedings and the costs of bringing witnesses to New Zealand for that adjourned fixture. She submitted that any award of costs should be at the lower end of the scale.

[9] I accept the thrust of Ms McNally's submissions and consider that there was a test case aspect to these proceedings. I also consider the costs incurred were high for a two hour fixture. However, through no fault of its own, the defendant was put to additional expense as a result of the abandoned fixture, and I agree with Ms

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<sup>1</sup> WC 23/07, 30 November 2007.

McInally that this should be acknowledged by an award of costs at the lower end of the scale.

[10] In all the circumstances, I consider that the award in the *Tramways Union* case does provide a reasonable guideline and order the plaintiff to pay to the defendant, as a contribution towards the plaintiff's costs, the sum of \$3,000.

B S Travis  
Judge

Judgment signed at 3.15 pm on Thursday 26 May 2011