

**IN THE EMPLOYMENT COURT  
CHRISTCHURCH**

**[2014] NZEmpC 14  
CRC 10/13**

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

AND IN THE MATTER    of an application for costs

BETWEEN                THE SALAD BOWL LIMITED  
   Plaintiff

AND                        AMBERLEIGH HOWE-THORNLEY  
   Defendant

Hearing:                By memoranda of submissions filed by defendant on 11 and 13  
   September 2013

Appearances:        Bryan Forrest, advocate for plaintiff  
   Keith Murray and Shayne Boyce, advocates for defendant

Judgment:            12 February 2014

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**COSTS JUDGMENT OF CHIEF JUDGE G L COLGAN**

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[1] The defendant, who was successful on the plaintiff's challenge to the Employment Relations Authority's determination,<sup>1</sup> seeks a contribution towards her costs of representation in the proceedings before the Employment Court.

[2] At [104] of the substantive judgment issued on 16 August 2013,<sup>2</sup> the Court allowed the defendant to apply by memorandum to be filed and served within 30 days of the judgment if the parties were unable to settle costs directly between them. In these circumstances, the plaintiff was then allowed the same period within which to respond by memorandum.

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<sup>1</sup> [2013] NZERA Christchurch 25.

<sup>2</sup> [2013] NZEmpC 152.

[3] No submissions were received by the Court from the plaintiff. Communications with the plaintiff's advocate indicate that he is without instructions on the matter of costs and, despite having advised the plaintiff of the Court's timetable for memoranda, the advocate regards himself as no longer acting for Salad Bowl Limited.

[4] In its costs determination dated 8 March 2013,<sup>3</sup> the Authority directed that the company contribute to Ms Howe-Thornley's costs in the sum of \$1,821.56 (including the Authority filing fee) and, as invited by the defendant, I confirm that award of costs as being appropriate following the Authority's determination. That sum was included in the amount paid into court by the plaintiff and has subsequently been distributed to the defendant. Nothing more needs to be said about it.

[5] The defendant was legally aided for her defence of the challenge in this Court. She seeks an award of costs of \$4,383.22 (including GST) together with a figure of \$100 for disbursements. The defendant's grant of legal aid amounted to \$3,211.90 (including GST). The higher figure claimed is a contribution to what would have been the defendant's likely costs had she not been legally aided. The defendant cannot, however, recover more than was actually incurred and paid out by the legal aid authorities for her representation in the proceeding.

[6] Ms Howe-Thornley's advocate has advised the Court that her legal aid grant allowed for the equivalent of 33 hours of work comprising 14 hours for preparation for a one day hearing, hearing time of eight hours, five hours for additional submissions called for by the Court in relation to s 66 of the Employment Relations Act 2000, and six hours for making costs submissions. These time allowances impress me as realistic, except perhaps for the last one which seems generous, but overall they are reasonable for a case of this sort.

[7] I conclude that the defendant's actual (legal aid) costs incurred were reasonable and that the appropriate contribution to these is the notional starting point of two thirds. Given the test case nature of the proceeding I do not propose to increase these from that starting point.

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<sup>3</sup> [2013] NZERA Christchurch 52.

[8] In these circumstances I fix the costs which the plaintiff must pay to the defendant in the sum of \$2,141.27 plus \$100 for disbursements as allowed for by the legal aid grant. The plaintiff must pay these sums combined (\$2,241.27) to the defendant.

GL Colgan  
Chief Judge

Judgment signed at 10.30 am on Wednesday 12 February 2014