

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2013] NZEmpC 173
ARC 85/08**

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

AND IN THE MATTER of an application for costs

BETWEEN BRIAN ALEXANDER WEBB
 Plaintiff

AND NEW ZEALAND TRAMWAYS AND
 PUBLIC PASSENGER TRANSPORT
 EMPLOYEES' UNION
 INCORPORATED
 Defendant

Hearing: By submission filed by the defendant on 3 September and by
 the plaintiff on 13 September 2013

Appearances: Paul Carrucan, advocate for the plaintiff
 Simon Mitchell, counsel for defendant

Judgment: 17 September 2013

COSTS JUDGMENT OF JUDGE M E PERKINS

[1] This challenge involved a long standing dispute dating from 2008. The history of the matter is set out in my judgment of 16 August 2013.¹ That judgment dealt with issues relating to discovery and inspection of documents in the substantive proceeding between the plaintiff and the defendant and also dealt with an application by the defendant to have the proceedings struck out.

[2] The effect of the judgment was that in view of the issues in the substantive proceedings now being moot, they should be struck out. I reserved the matter of

¹ [2013] NZEmpC 154.

costs to enable the advocate for Mr Webb and the counsel for the union to file memoranda. Such memoranda have now been received.

[3] The defendant seeks costs. On the basis of legal authority Mr Mitchell, counsel for the defendant, seeks an award of two thirds of actual costs incurred. He attaches to his memorandum invoices showing a total sum of \$3,797.50 being the actual costs incurred in respect of the interlocutory applications upon which the judgment is based. No costs are sought in respect of any other parts of the litigation. He accordingly seeks a contribution towards costs of \$2,500.

[4] Mr Carrucan, advocate for the plaintiff, in his memorandum indicates that the plaintiff opposes the award of costs. Unfortunately the memorandum from Mr Carrucan refers to matters irrelevant to the issue of costs in his attempt to retrace issues which have been dealt with in the judgment. Nevertheless, Mr Carrucan makes the point that as a result of the proceedings, the union was forced to regularise positions relating to its rules and elections. While no benefit can be achieved by the plaintiff personally in continuing with the proceedings, a partially successful outcome was achieved by him. As indicated in my judgment I accept that Mr Webb was disaffected over what transpired back in 2008.

[5] In his memorandum Mr Carrucan points out that Mr Webb was a person of modest means.

[6] These proceedings were not advanced by the parties as they should have been. With the lapse of time which occurred, the momentum of Mr Webb's claim was lost so that a point was reached where continuation of the proceedings had no point. The strike out order was partially made on that basis.

[7] The Employment Relations Authority's (the Authority) determination upon which the challenge to this Court was made also indicated that there may have been irregularities with membership and elections of this particular union. The Authority Member indicated, however, that he was not prepared in the circumstances to intervene. During the course of the application to strike out, Mr Mitchell also

conceded that there may have been irregularities and it was on that basis that amendments were made to the rules. Subsequent elections were validly held.

[8] In the circumstances it seems to me that Mr Webb has obtained partial success with his objective. Accordingly, it is appropriate that I not exercise my discretion to award costs against him. Each party is accordingly ordered to bear their own costs in this entire litigation.

M E Perkins
Judge

Judgment signed at 1pm on 17 September 2013