

**IN THE EMPLOYMENT COURT
WELLINGTON**

**[2013] NZEmpC 53
WRC 37/11**

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

BETWEEN JENNIFER GINI
Plaintiff

AND LITERACY TRAINING LIMITED
Defendant

Hearing: By memoranda of submissions dated 17, 19 and 20 March 2013

Counsel: Patrick O'Sullivan, advocate for the plaintiff
Tim Cleary, counsel for the defendant

Judgment: 10 April 2013

SUPPLEMENTARY JUDGMENT ON COSTS OF JUDGE A D FORD

[1] In my costs judgment¹ in this proceeding dated 7 March 2013, I referred to a matter which, in hindsight, I should perhaps have clarified with more particularity in order to avoid the unfortunate resulting confusion which has culminated in the filing of an application for a compliance order on behalf of the plaintiff. The issue relates to whether interest amounting to \$195.57 earned on a payment into Court accrued for the benefit of the plaintiff or the defendant.

[2] In the concluding section of my costs judgment of 7 March 2013, I awarded costs in the plaintiff's favour totalling \$12,793.44. I then went on to state:

[40] The Registrar is hereby authorised to uplift the funds that have been paid into Court by Literacy Training, together with the interest thereon, and make payment of the same to Ms Gini's advocate on account of the awards that have now been made in Ms Gini's favour. The Registrar is to provide Mr Cleary with details of the payment out of Court.

¹ [2013] NZEmpC 25.

[3] The background to the payment into Court was that Literacy Training had been the original plaintiff. On 30 November 2011, it challenged a determination² of the Employment Relations Authority (the Authority) dated 3 November 2011. In order to avoid having to deal with a hearing in relation to security for costs, Literacy Training paid into Court the full amount the Authority had awarded Ms Gini, namely, \$15,140.

[4] The next development, as recorded in my costs judgment, was that on 3 May 2012, Literacy Training discontinued its challenge. The matter proceeded, however, on the basis of a cross-challenge by Ms Gini to the quantum of the Authority's awards in her favour for both her economic and non-economic loss. She was successful but only in respect of her claim for an increase in her non-economic loss award.

[5] Theoretically, Literacy Training could have made an application at the time of its discontinuance for the money it had paid into Court to be released but the funds remained in an interest-bearing deposit account.

[6] When the Court directed the Registrar to make the payment out recorded in [2] above it was on the basis that the payment made into Court, together with accrued interest, belonged to the defendant and, as recorded in the judgment, the payment out was a payment "on account of the awards that have now been made in Ms Gini's favour."³ There should not have been any confusion about that. The plaintiff had not claimed interest in her pleadings and no award of interest was made by the Court. In any event, interest is not awarded in this Court on compensation for non-economic loss - see *Reynolds v Burgess*.⁴

[7] The plaintiff's application for a compliance order is dismissed.

[8] No order is made as to costs.

A D Ford
Judge

Judgment signed at 11.45 pm on 10 April 2013

² [2011] NZERA Wellington 169.

³ At [40].

⁴ CC 5/07, 114.