

IN THE SUPREME COURT OF NEW ZEALAND

**SC CIV 24/2004
[2005] NZSC 54**

BETWEEN JAMES BRYSON
 Appellant

AND THREE FOOT SIX LIMITED
 Respondent

AND NEW ZEALAND COUNCIL OF TRADE
 UNIONS
 First Intervener

AND BUSINESS NEW ZEALAND
 Second Intervener

Court: Elias CJ, Gault, Keith, Blanchard and Tipping JJ

Counsel: M E Gould and T J Anderson for Appellant
 P M Muir and L S Jenkins for Respondent
 T Cleary for Business New Zealand

Judgment: 10 August 2005

JUDGMENT OF THE COURT ON COSTS

- A. The costs of \$16,000 and disbursements of \$878.87 awarded by the Employment Court are confirmed.**

- B. The costs order in the Court of Appeal is reversed. The appellant is awarded \$6,000 covering costs in that Court and its disbursements in that Court of \$183.64.**

- C. Costs in this Court payable by the respondent are fixed at \$15,000 together with the appellant's disbursements to be determined if necessary by the Registrar.**

D. There will be no costs award in relation to either of the Interveners.

REASONS

(Given by Blanchard J)

[1] Having considered the written submissions of counsel, we see no reason to depart in this case from the approach to costs awards in this Court set out in *Prebble v Awatere Huata (No 2)* [2005] 2 NZLR 467 at [11] and [12].

[2] Counsel for the respondent submitted that costs should lie where they fell because this was the first case before the Court, and before the Court of Appeal, to examine and determine the legislative intent of s 6 of the Employment Relations Act 2000 and thus should be treated as a test case on a new area of the law. Because, however, of the leave criteria in s 13 of the Supreme Court Act 2003 the issues before this Court are always likely to involve such questions of novelty and general significance. This was not a case in which the amount at stake for the respondent was entirely disproportionate to the overall benefit for it of retaining the Court of Appeal judgment. It was not a true test case, as where one litigant for whom personally only a small sum is in issue is selected to represent a number of persons in a similar position, such as happens, for example, when the Commissioner of Inland Revenue designates a matter as a test case.

[3] The appellant, for his part, submitted that costs should be increased because interveners were permitted to file written submissions. On the other hand, however, leave was granted on the papers, without need for a hearing.

Solicitors:
Gibson Sheat, Lower Hutt for Appellant
Simpson Grierson, Auckland for Respondent
Tim Cleary, Wellington for Business New Zealand