

**IN THE EMPLOYMENT RELATIONS COURT**

**AT SUVA**

**APPELLATE JURISDICTION**

**CASE NUMBER:** ERCA 17 of 2011

**BETWEEN:** **THE UNIVERSITY OF THE SOUTH PACIFIC**  
**APPELLANT**

**AND:** **USP PERMANENT HOURLY PAID STAFF AND INTERMEDIATE  
JUNIOR STAFF UNION**  
**RESPONDENT**

*Appearances:* Mr. N. Barnes for the Appellant.

No Appearance for the Respondent.

*Date/Place of Judgment:* Thursday 16 July 2015 at Suva.

*Coram:* Hon. Madam justice A. Wati.

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**RULING**

**Catchwords:**

**EMPLOYMENT LAW – Costs of Appeal – Indemnity Costs – Cases where Indemnity costs is granted – discretion to award costs – summary assessment of costs.**

**Cases Referred To:**


*Fountain Selected Meats (Sales) Pty Ltd. v. International Produce Merchants Pty Ltd. (1988) 81 ALR 397.*

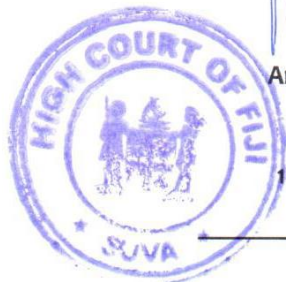
*J-Corp Pty Ltd. v. Australian Builders' Labourers' Federated Union of Workers (WA Branch) (No 2) (1993) 46 IR 301.*

*Degmam Pty Ltd. (in liq) v Wright (No 2) [1983] 2 NSWLR 1.*

1. The appellant being successful on appeal seeks an order for costs against the respondent in the sum of \$7,404.38 being all the legal costs incurred in the appeal proceedings.
2. When delivering the appeal judgment on 17 April 2013, I had granted costs in favour of the appellant to be assessed after hearing both parties. There were no submissions by the respondent on the issue of quantum to be determined.
3. The application for a sum of \$7,404.38 is an application for indemnity costs.
4. Indemnity costs are ordinarily awarded only in circumstances involving misconduct, for example, to penalize a party where they have maintained a cause of action with no real prospect of success (*Fountain Selected Meats (Sales) Pty Ltd. v. International Produce Merchants Pty Ltd. (1988) 81 ALR 397*); or for some ulterior motive or with willful disregard for known facts or clearly established law (*J-Corp Pty Ltd. v. Australian Builders' Labourers' Federated Union of Workers (WA Branch) (No 2) (1993) 46 IR 301 at 303*); or where deliberately false allegations of fact have been made: *Degmam Pty Ltd. (in liq) v Wright (No 2) [1983] 2 NSWLR 1 at 34*.
5. This is not a case where ordering indemnity cost is justifiable.
6. Awarding costs is a discretionary matter and I find that a summary assessment of costs is justified in this case. I bear in mind the costs incurred in filing the appeal, preparing the submissions, attending Court some eight times, and attending to clients instructions.
7. All the Court attendances including hearing would not exceed two hours in total. The preparation of appeal and submissions could reasonably be allocated five hours of work.
8. The total hours that would have been reasonably spent on this case is seven hours.
9. I find that a sum of \$2000 is justified in this case for work done for seven hours.

10. I order that the respondent pays a sum of \$2000 to the appellant within 21 days from the date of the decision.

  
Anjala Wati  
Judge  
16.07.2015



To:

1. Mr. N. Barnes for the Appellant.
2. Respondent.
3. File: Suva ERCA 17 of 2011.