

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 385
3084332

BETWEEN

BRYCE ARTHUR
Applicant

AND

STRUCTURAL HOLDINGS
LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Applicant in person
David Ballantyne, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: No submissions received from the Applicant
26 August 2020 from the Respondent

Date of Determination: 29 September 2020

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr Arthur lodged a statement of problem through his advocate, Paul Mathews on 12 December 2019. This claim progressed through the Authority with Structural Holdings Limited instructing counsel, David Ballantyne, and lodging a statement in reply on 8 January 2020. A case management conference was then held in which the claim was set down for an investigation meeting.

[2] Then, on 24 August 2020 Mr Mathews withdrew from representing Mr Arthur and advised that he understood Mr Arthur wished to withdraw his claim. On 25 August 2020, Mr Arthur confirmed to the Authority that he no longer wished to pursue the claim he had lodged with the Authority.

[3] Mr Ballantyne, on behalf of Structural Holdings, accepted that Mr Arthur could withdraw his claim but submitted there was still an issue of costs. In this regard he advised that Structural Holdings sought an order for costs for the work he had undertaken in responding to Mr Arthur's claim.

[4] The Authority informed Mr Arthur of Structural Holdings' position in respect of costs and he was served with a copy of Mr Ballantyne's application seeking costs. Mr Arthur was given fourteen days to respond to the application but no response has been received from him.

[5] Mr Ballantyne says the work he undertook for Structural Holdings was to take instructions on the claim lodged by Mr Arthur and respond to it by lodging a statement in reply. Mr Ballantyne also attended the case management conference conducted by the Authority. For this work he says the fee for Structural Holdings will be \$3,550.00 including GST.

[6] Mr Ballantyne simply submits that Mr Arthur's withdrawal of his claim does not mean costs should not be awarded to Structural Holdings and the normal principles for awarding costs in the Authority should apply. On this basis he seeks an order that Mr Arthur pay a contribution to Structural Holding's costs.

[7] Whether I should award costs or not is a matter of discretion and governed by the well-established principles set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*.¹

[8] The main principle to be applied here is that costs should normally follow the event. In essence, Structural Holdings has been successful in dealing with Mr Arthur's claim as it

¹ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

has been withdrawn and it has incurred costs in doing so, so it should be entitled to an award of costs.

[9] The fact that Mr Arthur's claim was withdrawn is of no consequence as I can make an award of costs in circumstances where a party withdraws a statement of problem before an investigation meeting.²

[10] However in assessing the quantum of any award I will depart from applying the normal daily tariff approach – this being where a set amount of costs is awarded to a successful party based on each day of the investigation meeting being used to calculate quantum. As this matter did not progress to an investigation meeting applying the daily tariff would be illogical.

[11] In terms of quantum I have considered relevant determinations of the Authority.³ I conclude that Structural Holdings is entitled to an order for costs and I consider that \$500.00 is an appropriate sum.

Conclusion

[12] I determine that Mr Arthur must pay Structural Holdings \$500.00 as a contribution to its legal costs reasonably incurred in responding to Mr Arthur's claim.

Peter van Keulen
Member of the Employment Relations Authority

² *Eden v Rutherford & Bond Toyota Ltd* [2010] NZEmpC 43.

³ *Graham Kemp v Post Haste Ltd* [2014] NZERA Auckland 266; *New Zealand Guardian Trust Company Ltd v Katherine Mayne* [2015] NZERA Auckland 113; and *Lighthouse ECE Ltd* [2016] NZERA Wellington 2.