

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 213  
3003603

BETWEEN                      IDEA SERVICES LIMITED  
Applicant

A N D                              JOSEPH WELCH  
Respondent

Member of Authority:      TG Tetitaha

Representatives:            P McBride, Counsel for Applicant  
J Welch in person

Investigation Meeting:      On the papers

Submissions:                2 May 2017 from Applicant  
3 May 2017 from Respondent

Date of Determination:      19 July 2017

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A.     The application for costs is declined. Each party shall meet their own costs.**

**Employment relationship problem**

[1]     This is an application for costs by an applicant Idea Services Limited, (ISL) following withdrawal of its matter before the Authority.

[2]     ISL seeks costs because it was put to the expense of filing urgent interim injunction proceedings seeking to restrain Joseph Welch from using information it alleged he retained in his possession. An application to remove this matter to the Court was also filed but not progressed.

## **Relevant Facts**

[3] Mr Welch was the subject of disciplinary proceedings resulting in the termination of his employment.

[1] On 20 February 2017 ISL wrote to Mr Welch requiring he sign a statutory declaration that he had in fact returned all its property. Mr Welch declined to do so. He stated in an email of the same date that *“all documentation has been returned and I’m not in possession of anything related to Idea Services or its subsidiary’s staff or service users.”* He had earlier offered to pay for a forensic expert chosen by ISL to investigate his emails, computer or anything relative. This was declined.

[2] The following day Mr Welch emailed ISL. He had received emails from ISL management from November 2015 – October 2016 sent to his personal email address that had been copied to the Ministry of Health (MOH). MOH were investigating a complaint he had made about ISL. From the email it appeared he had discovered copies of the MOH emails and was alerting the respondent to their existence.

[3] ISL determined this showed Mr Welch continued to retain information and filed the urgent interim injunction proceedings.

[4] Initially this matter was directed to urgent mediation within 14 days and the time for filing a statement in reply was abridged to 10 days. However ISL subsequently sought removal to the Court and an urgent telephone conference. This matter did not progress to mediation as a consequence.

[5] At a teleconference on 23 February 2017 Mr Welch offered to sign the statutory declaration to resolve matters. This was executed the next day. ISL was given time to consider whether it wished to progress matters. It has not withdrawn its proceeding and seeks costs. It is understood Mr Welch resides overseas.

## **Should costs be awarded at all?**

[6] This is an unusual application. It is made by the applicant who is withdrawing the proceeding. Although costs are discretionary, they usually follow the event. In this instance there has been no hearing or admission of liability by Mr Welch. Mr Welch’s agreement to sign the declaration is not an admission he either took or knowingly retained information post-employment.

[10] The information he had in his possession on 21 February is arguably information sent to him. It was not unlawfully taken. The issue of whether he knowingly retained this information has never been tested at hearing.

[7] There is evidence it was an innocent breach. His advice to ISL about the email to the MOH attaching ISL material does not indicate any dishonesty or bad intent. Rather it was an admission against his own interest. There was no evidence he retained ISL information post 21 February other than speculation.

[8] His offer for ISL to undertake a forensic search of his personal email and computer has never been followed up. There was no legal entitlement to a statutory declaration on the terms Mr Welch signed. He gave this willingly to prevent any further cost to either party.

[9] The application for costs is declined. Each party shall meet their own costs.

**TG Tetitaha**  
**Member of the Employment Relations Authority**