

[3] Mr Skinner has written to the Authority seeking a determination as to costs in favour of the respondent. The claim relates to costs incurred in attending the directed mediation, filing a statement in reply and attending teleconferences in relation to this matter. Mr Skinner advises costs incurred to date total \$4415.63 (including GST and disbursements). He submits a full award of costs is warranted given the speculative nature of the applicant's claim.

[4] Mr Broadbelt submits it is too soon to set costs because the substantive claim is afoot. He submits the respondent was on notice upon receipt of the statement of problem of the applicant's intention to seek damages and penalties for breach of contract. He submits the claim is based on reasonable grounds and is being pursued.

Determination

[5] *NZ Automotive Association v McKay*¹ is authority for the proposition that it is more just to deal with costs on an interlocutory application when the substantive proceedings are determined.

[6] There is nothing about this application or how it has been pursued to date that would justify the Authority departing from the *McKay* proposition – the urgent element of the application has been withdrawn without any hearing or concomitant timetable being scheduled, associated costs incurred and the substantive claim is being pursued.

[7] While I appreciate the respondent's concern at having incurred such substantial costs at such an early stage in these proceedings, even if the applicant had withdrawn its total claim, given no hearing had been scheduled, it is open as to whether there would be grounds for an award of costs².

[8] Costs are reserved.

Marija Urlich

Member of the Employment Relations Authority

¹ [1996] 2 ERNZ 622

² *Data Group Ltd v Gillespie* 22/3/04, Travis J, AC16/04

