

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 53  
5355519

BETWEEN                      PETER OLIVER  
   Applicant  
  
AND                              PARADISE VALLEY  
   SPRINGS LIMITED  
   Respondent

Member of Authority:      R A Monaghan  
  
Representatives:            M Harvey, counsel for applicant  
   K Raureti, advocate for respondent  
  
Memoranda received:      13 February 2013 from applicant  
   29 January 2013 from respondent  
  
Determination:              15 February 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]      This employment relationship problem was scheduled for an investigation meeting on 30 October 2012. Mr Oliver withdrew his claim on 25 October 2012.

[2]      Paradise Valley Springs Limited (PVSL) seeks an order for costs in an amount it has left largely at the discretion of the Authority, although it advised it has incurred costs in the sum of \$4,462.50 plus GST.

[3]      Counsel for Mr Oliver says costs should lie where they fall.

**Determination**

[4]      Costs can be awarded in respect of a matter which is withdrawn before an investigation meeting. Relevant factors in considering such awards include the timeliness of the withdrawal, and the extent of the preparation before the withdrawal.

[5] Here both parties have emphasised the merits of their positions on the substantive matter, namely whether Mr Oliver was dismissed unjustifiably for serious misconduct. From the papers I can say only that there were significant procedural failures in PVSL's approach to Mr Oliver's alleged misconduct. By the same token the allegations against Mr Oliver were serious and if I had accepted truth of the statements of PVSL's witnesses - being the individuals at whom the misconduct was directed - Mr Oliver would not have succeeded.

[6] More importantly in the context of costs, the investigation meeting was scheduled for one day, and as at the date of withdrawal both parties had prepared and filed witness statements. Mr Oliver's late withdrawal put PVSL to unnecessary cost in preparing for the investigation meeting, including in the preparation of witness statements, although PVSL was saved the further cost of attending the meeting.

[7] PVSL is entitled to an award in respect of the unnecessary cost. If the investigation meeting had gone ahead and PVSL had been successful, a likely award of costs would have been \$3,500, being the Authority's notional daily rate.<sup>1</sup> Taking into account the cost saving achieved when the meeting did not proceed, and the litigation risk PVSL faced because of the procedural deficiencies, I consider an award in the sum of \$1,000 is appropriate.

[8] Mr Oliver is therefore ordered to pay to PVSL the sum of \$1,000.

R A Monaghan

Member of the Employment Relations Authority

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<sup>1</sup> *PBO Limited v da Cruz* [2005] ERNZ 808