

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2024] NZERA 561
3171883

BETWEEN	MICHAEL TAIA Applicant
AND	AKE INNOVATION LIMITED Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Applicant in person
Steve Franklin, counsel for the Respondent

Submissions received: 12 January, 4 April and 16 July 2024 from Applicant
13 December 2023 and 6 September 2024 from
Respondent

Determination: 18 September 2024

DETERMINATION OF THE AUTHORITY

[1] Mr Taia seeks a stay in relation to the Authority determination on costs. In a determination dated 27 November 2023 the Authority declined Mr Taia's application for an order that Ake Innovation Limited (Ake) comply with the terms of a settlement the parties concluded pursuant to s 149 of the Employment Relations Act 2000 (the Act).¹

[2] The Authority reserved the issue of costs. Mr Taia filed a statement of claim in the Employment Court seeking a full hearing of the entire matter. Ake lodged a claim for costs in the Authority on 13 December 2023. Mr Taia now seeks an order from the Authority staying the decision on awarding costs.

¹ *Michael Rawiri Taia v Ake Innovation Limited* [2023] NZERA 709.

Stay of proceedings

[3] In response to Ake's claim for costs, Mr Taia lodged a memorandum on 12 January 2024 seeking that the issue of costs (a) rest with the respective parties and (b) be reserved pending the outcome of the Employment Court proceedings. The Authority indicated to the parties that the preferred option is to resolve costs in the Authority rather than reserve costs pending the Employment Court outcome.

[4] On 4 April 2024, Mr Taia asked for an extension to file submissions because he wanted to seek legal advice about this course of action. The matter was transferred to a different Member in accordance with clause 18, schedule 2 of the Act. Further enquiry was made with Mr Taia as to whether he wished to lodge costs submissions or any other submission. On 16 July 2024, Mr Taia lodged a further memorandum seeking a stay as to costs until the latter of:

- (a) The Employment Court proceedings into Mr Taia's challenge are completed or significantly advanced; and/or
- (b) Any determination under the scope of section 161 of the Lawyers and Conveyancers Act 2006 relating to the appropriateness of the costs sought by the Respondent is addressed.

[5] On 21 August 2024, noting Mr Taia had confirmed he wished to apply for a stay, the Authority sought submissions from Ake. On 6 September Ake's submissions, opposing the application for a stay were lodged. Ake noted that the best approach would be for the Authority to issue its determination as to costs thereby completing the Authority proceedings. That has the advantage of the dispute being contained within one forum and jurisdiction and it is submitted there is no prejudice to either party if the Authority follows this course of action.

[6] For completeness, Mr Taia rejects completely Ake's submission set out in its application for costs lodged in December 2023, that Mr Taia's application for compliance had little or no prospect of success and by his own conduct Mr Ake has unnecessarily increased the costs of Ake, as the successful party.

[7] This is a situation where a challenge to the Authority's determination was lodged in the Employment Court before costs were resolved in the Authority. This is not unusual in this jurisdiction. Section 180 of the Act provides that electing to challenge an Authority determination does not act as a stay but the Authority (or the Court) can order a stay of proceedings.

[8] Neither party is prejudiced by the Authority proceeding to determine costs while there is a challenge in the Employment Court. Once an Authority costs determination is issued, the party challenging the substantive determination can amend their statement of claim in the Court to include a challenge to the costs determination if they wish or either party can file a separate challenge to the determination.²

Conclusion

[9] The proceedings in the Authority are not concluded because costs have not been determined. Ake has made an application for costs and no basis for a stay has been provided, other than the fact there is a challenge in the Employment Court. Although the appropriateness of actual costs claimed by Ake is referred to in Mr Taia's 16 July 2023 memorandum, this is unlikely to be relevant to determining costs in the Authority. This is because the Authority normally awards a contribution to costs and uses a notional daily tariff as a starting point.³ In most cases this is regardless of what the actual costs amounted to. I also note Ake is not claiming actual costs.

[10] In this case I decline to order a stay of proceedings for costs in the Authority.

[11] Any submissions Mr Taia wishes to make on costs in the Authority must be lodged by 1 October 2024.

Sarah Kennedy-Martin
Member of the Employment Relations Authority

² [EMPLOYMENT-COURT-PRACTICE-DIRECTIONS-as-at-1-September-2024-v2.pdf \(employmentcourt.govt.nz\)](#)

³ [Awarding remedies and costs | Employment Relations Authority \(era.govt.nz\)](#)