

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 199/08  
5081273

BETWEEN                      ANTHONY TOMPKINS  
   Applicant  
  
AND                              ACTIONFLITE LIMITED  
   Respondent

Member of Authority:      Philip Cheyne  
  
Representatives:            Anthony Tompkins, applicant in person  
   James Langley, advocate for respondent  
  
Submissions Received      9 December 2008 from the respondent  
   10 December 2008 from the applicant  
  
Determination:              23 December 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]      Mr Tompkins worked for Actionflite Limited. After the employment ended he raised a personal grievance claim and later on 13 March 2007 lodged this problem with the Authority.

[2]      The last scheduled meeting was for 26 September 2008. It is not necessary to detail the difficulties with getting this matter to an investigation meeting before then.

[3]      On 16 September 2008 Mr Tompkins confirmed by email to the Authority that he was withdrawing his claim, as he is entitled to do at anytime. Soon after the respondent was advised of this they foreshadowed an application for costs. Details were received on 9 December 2008 and the Authority sent this information to Mr Tompkins. Mr Tompkins responded on 10 December 2008. Because of the response he was given until 22 December 2008 to say anything further. This determination now resolves the question of costs.

[4] I take from Mr Tompkins' 10 December 2008 email that a reason for him withdrawing his application was to avoid the risk of costs being awarded against him in the event of not succeeding with his claim. Withdrawing the proceedings at a late stage does not protect an applicant from an award of costs but it does reduce the potential liability compared to continuing and losing.

[5] I have been provided with invoices from the respondent's business advisor in respect of advice given to the company over employment issues. The first invoice is dated 28 February 2007 for services to 15 February 2007. That pre-dates the proceedings so cannot relate to the respondent defending these proceedings. There are then invoices dated 30 November 2007, 28 March 2008, 30 April 2008, 29 September 2008 and 29 October 2008 totalling \$4,710.00 (excluding GST). Actionflite Limited is presumably a GST registered entity so the GST exclusive figure is the relevant one: see for example *Andrew Yong t/a Yong & Co Chartered Accountants v Chin* (Couch J, 7 September 2007, AC 37A/07).

[6] The difficulty with the material provided is that the brief description in each invoice does not allow the Authority to identify the work done or the time spent by the advisor with any precision. That difficulty is compounded because there were ongoing attempts to resolve the matter by mediation and the advisor appears to have been involved in that work. Professional advice related to mediation is not part of the costs which the Authority has regard to when determining legal costs between parties. I also note that some of the advisor's work must relate to an adjournment application by the respondent which should be disregarded for present purposes.

[7] In light of the difficulties identifying the actual costs necessarily incurred in defending these proceedings I will make an award representing a modest contribution to the respondent's costs. Mr Tompkins is to pay Actionflite Limited \$1,000.00 as a contribution to its costs.

[8] Mr Langley also refers to costs involved in travelling back to New Zealand and telephone costs incurred in dealing with the proceedings. I have not been given any invoices or receipts to confirm these costs. The Authority paid the cost of a conference call and other communications were by email. Mr Langley never needed to be present in New Zealand because the matter never got to an investigation meeting. Since I cannot establish with sufficient certainty that these costs were

necessarily incurred in defending the proceedings I am not prepared to make any order requiring Mr Tompkins to pay disbursements.

**Summary**

[9] Mr Tompkins is to pay Actionflite Limited \$1,000.00 as a contribution to its costs.

Philip Cheyne  
Member of the Employment Relations Authority