

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND
I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

**[2019] NZERA 190
3046252**

BETWEEN REPETA MAKEA-RUAWHARE
Applicant

AND TURUKI HEALTH CARE
CHARITABLE TRUST
Respondent

Member of Authority: Eleanor Robinson

Representatives: Michael O'Brien, Counsel for Applicant
Anthony Drake & Dylan Pine, Counsel for Respondent

Submissions: 29 March 2019 from the Applicant
13 March 2019 from the Respondent

Determination: 2 April 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a determination dated 13 February 2019 ([2019] NZERA 73), the Authority declined an application for removal made by the Applicant, Ms Repeta Makea-Ruawhare in respect of her claim against the Respondent, Turuki Health Care Charitable Trust (Turuki).

[2] In that determination I indicated at paragraph [44] that I was minded to reserve the issue of costs until resolution of the substantive matter. However I invited the parties to file memoranda on the issue of costs if they were minded to do so, and the Respondent has filed a memorandum seeking costs.

[3] Mr Pine, on behalf of Turuki is seeking an award of costs in respect of those incurred in the removal matter, being the sum of \$4,149.00.

[4] Mr Pine submits that the interlocutory application for removal was an unnecessary use of the Authority's time and resources and added unnecessarily to the costs of the Respondent.

Submissions of the Applicant

[5] The Applicant submits that there is no basis for the Authority to depart from its indicated position in [2019] NZERA 73 that costs be reserved until the conclusion of the substantive matter, as the Respondent has not indicated that it will suffer any detriment in costs being reserved until that time.

[6] It is submitted that some of the Authority's determination concerned the Respondent's request that the Applicant's statement of problem be dismissed and struck out under *res judicata* principles. This issue also occupied the majority of submissions from both parties.

[7] It is submitted that the Respondent costs claim is manifestly excessive for a matter determined on the papers. For an interim matter the award should be no more than \$500.00.

[8] It is further submitted that is the Authority is minded to award costs at this time, then the Authority should decline the application on the basis that costs given the Respondent has failed at the first step by failing to provide accompanying evidence.

Costs Award

[9] The Authority's power to award costs is at the discretion of the Authority pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act).

[10] The principles the Authority applies in respect of costs are well-settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹. The principles include that costs generally follow the event and that costs will be modest and reasonable.

[11] The Respondent has been the successful party in the removal application and is entitled to costs in that proceeding.

[12] The matter was determined by the Authority on the papers by way of timetabled submissions and the parties were not put to the expense of attending at an investigation meeting.

¹*PBO v Da Cruz* [2005] 1 ERNZ 808

[13] I note the submissions of the Applicant regarding the Respondent's lack of supporting documentation. I have also considered the Applicant's submission that the Respondent will not suffer any detriment by having the costs deferred pending the resolution of the substantive matter.

[14] This matter is set down for a substantive hearing on 14 and 15 May 2019, which is within a relatively speedy timeframe. On that basis I do not feel that there will be a significant detriment to the Respondent in costs being deferred until that matter is determined.

[15] However I think it would be helpful to the Applicant in particular to be advised of the level of cost award which may be subsequently deemed appropriate and awarded in respect of this interlocutory matter at a later date when the full costs award is considered.

[16] As this matter was determined on the papers and I see no grounds for increasing above the usual daily tariff level as applied in the Authority, I can indicate that I consider an award of \$1,125.00 to the Respondent as appropriate in respect of the equivalent of a quarter day investigation meeting.

Eleanor Robinson

Member of the Employment Relations Authority