

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 200
3147183

BETWEEN DAVID GRAY
 Applicant

AND MATTHEW LAI
 Respondent (Joined)

AND NATIONAL MOVERS LIMITED
 Respondent (Struck out)

Member of Authority: Philip Cheyne

Representatives: Paul Mathews, advocate for the Applicant
 Alwyn O'Connor, counsel for the Respondents

Submissions: 12 April for the applicant
 11 & 12 April 2022 for the respondents

Date of Determination: 17 May 2022

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] David Gray lodged personal grievances and penalty claims identifying National Movers Limited T/A Christchurch Movers (NML) as his former employer and therefore the respondent.

[2] Mr Lai as agent for National Movers Limited lodged a statement in reply. The gist of the reply was that NML never employed Mr Gray. NML said that Mr Gray was employed by its contractor.

[3] Following a case management conference, Mr Gray applied to have Mr Lai joined as a respondent and noted he would consent to NML being struck out as a respondent. Mr Gray's advocate explained that the claim originally identified NML rather than Mr Lai personally as the respondent by mistake. Mr Lai opposed joinder and NML considered that the claim should be struck out, given the concession that the claim should not have identified NML as the respondent.

[4] On 11 April 2022, I joined Mr Lai, required him to lodge a reply and directed that NML did not need to take any further steps but would be struck out as a party in due course.

[5] NML seeks costs. This determination resolves that claim.

Should costs be awarded to National Movers Limited?

[6] NML seeks costs for counsel to prepare the statement in reply, attend the case management conference, review the application and advise on joinder. \$1,000.00 is claimed. Counsel submits that costs are appropriate where a company is named as a respondent by mistake but has needed to take steps under the legislative regime.

[7] Mr Lai is NML's sole director and a 50% shareholder. The application was served on the company and Mr Lai signed and lodged NML's reply in August 2021. The Authority was first advised that counsel was instructed in March 2022, at the time of the case management conference being arranged. The costs application is not supported by an invoice describing counsel's work with respect to the statement in reply. Absent any invoice to establish legal costs for preparing a statement in reply, NML should be treated as having represented itself through its director. No legal costs are claimable for preparing and lodging a reply.

[8] Counsel was involved in the case management conference, NML's opposition to joinder, its application to strike out the proceedings and in this costs application. NML's opposition to joinder and its application to strike out the proceedings were not successful. That leaves NML's costs for having counsel appear on the case management conference as relevant for present purposes.

[9] The case management conference was very brief. In the absence of an invoice allowing the identification of legal costs properly attributable to that step, it is not possible to determine what might amount to a reasonable contribution towards NML's costs caused by it being mistakenly named in the initial proceedings.

[10] Mr Lai's defence to the claim once he was joined as the respondent replicated NML's defence. Notwithstanding Mr Lai's interaction with Mr Gray before the employment, Mr Lai says that Mr Gray was employed by a contractor to one of the companies of which he is a director. The substance of the dispute principally turns on whether Mr Lai (whether acting personally or for a company he is a director of) employed Mr Gray or whether Mr Lai just referred Mr Gray to the contractor who then employed Mr Gray on work performed by the contractor for one of Mr Lai's companies. That point remains.

[11] In this context and in the absence of an invoice to establish costs, NML's application is dismissed.

[12] As foreshadowed, National Movers Limited is struck out as a party to the present claim.

Philip Cheyne
Member of the Employment Relations Authority