

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 366  
3274459

BETWEEN HOSEA COURAGE, DANIEL  
PILGRIM, AND LEVI COURAGE  
Applicants

A N D THE OVERSEEING SHEPHERD  
Respondent

Member of Authority: David G Beck

Representatives: Brian Henry, Dennis Gates and Stephen Patterson counsel for  
the Applicants  
Philip Skelton KC and Carter Pearce, counsel for the  
Respondent

Investigation Meeting: On the papers

Submissions Received: 3 May and 27 May 2024 from the Respondent  
24 May 2024 from the Applicants

Date of Determination: 20 June 2024

---

**COST DETERMINATION OF THE AUTHORITY**

---

**The Determination**

[1] By way of a determination of 5 April 2024 the Authority dealt with an application by the applicants (Mr Courage and others) to have this matter removed to the Employment Court. The application was unsuccessful.<sup>1</sup>

---

<sup>1</sup> *Hosea Courage, Daniel Pilgrim and Levi Courage v The Overseeing Shepherd* [2024] NZERA 200.

[2] The parties were asked to explore resolving costs by agreement but failed to do so. The matter was dealt with on the papers. The Overseeing Shepherd seeks costs as the successful party.

### **The Overseeing Shepherd's submission**

[3] Counsel for The Overseeing Shepherd first briefly set out his client's understanding of the Authority's discretionary jurisdiction and daily, tariff-based approach to costs. He then went on to suggest that as the outcome had been successful for his client costs should follow the event. Given the matter had been heard on the papers, a costs contribution of \$2,250 was sought to reflect the Authority's approach of treating such matters as akin to half day investigation meetings noting cost incurred by The Overseeing Shepherd had exceeded the latter claim. However, no evidence of actual costs incurred was provided.

### **Mr Courage and others' submission**

[4] Counsel for Mr Courage and others responded with a similarly concise submission suggesting in the unique circumstances of the case including the impecuniosity and relative youth of their clients and prevailing circumstances, that a fair approach was to let costs lie where they fall. No evidence of impecuniosity was provided.

### **Costs principles**

[5] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). The discretion it is accepted is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup> including that costs are not to be used as a punishment or as a reflection on how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.<sup>3</sup>

---

<sup>2</sup> *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

<sup>3</sup> Section 160(2) Employment Relations Act 2000.

## **Assessment**

[6] A general principle for a successful party is that costs should 'follow the event' and here The Overseeing Shepherd was successful in resisting the application to have this matter removed to the Employment Court.

[7] Counsel for The Overseeing Shepherd in a supplementary submission noted an uneven balance in the incurring of legal costs with the applicants having counsel undertaking pro-bono work for them and the respondent having to rely on communal funding for ongoing legal costs. While there is some force in the respondent's submission there is still an evident resource advantage in favour of the respondent.

[8] The removal application although not granted involved a unique matter to be determined by the Authority involving avowedly vulnerable individuals in a long running and ongoing process with unusually complex claims stemming from a past uneven power relationship.

[9] Looking at the totality of the issues and applying the Authority's discretion, I consider that it is equitable that no costs order be made.

## **Order**

[10] I decline to award costs and order that costs be left to lie where they fall.

David Beck  
Member of the Employment Relations Authority