

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 205  
3341680

BETWEEN TAMATI MAKARA  
Applicant  
AND FUN CONCEPTS LIMITED  
Respondent

Member of Authority: Simon Greening  
Representatives: Ronald Jones, advocate for the Applicant  
Murray Broadbelt, advocate for the Respondent  
Investigation meeting: On the papers  
Submissions received: 10 February 2026 from the Applicant  
25 February 2026 from the Respondent  
Determination: 7 April 2026

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Background**

[1] During a case management conference (CMC) on 25 November 2025, an investigation meeting was scheduled to take place on 9 February 2026.

[2] On 24 December 2025, Fun Concepts Limited (FCL) filed an application with the New Zealand companies office, requesting removal from the companies register because it had ceased carrying on business.

[3] On 15 January 2025, the companies office gazetted a public notice of intention to remove FCL from the companies register.

[4] The notice advised that any objection to removal of FCL from the companies register, was to be lodged with the companies office by 18 February 2026.

[5] On 29 January 2026, the Authority advised the parties it understood the companies office intended to remove FCL from the companies register.

[6] On 2 February 2026, Mr Makara withdrew his claims from the Authority.

[7] As at the date of this determination, FCL remains on the companies register, however the companies office is in the process of removing it from the register.

[8] FCL seeks costs against Mr Makara because he withdrew his claims from the Authority one week before the scheduled date for the investigation meeting.

[9] FCL seeks the sum of \$2,250 from Mr Makara, as a contribution to its legal costs. This sum is half of the notional daily tariff rate, which is \$4,500.

### **Analysis**

[10] The power of the Authority to award costs is set out in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). The principles and approach adopted by the Authority in exercising this power are set out in the Authority's Practice Direction and the legal principles which underpin it.<sup>1</sup>

[11] Mr Makara was in receipt of a grant of legal aid for this matter.

[12] The starting point for assessing costs, where a person has received a grant of legal aid, is section 45(2) of the Legal Services Act 2011:

No order for costs may be made against an aided person in a civil proceeding unless the court is satisfied there are exceptional circumstances.

[13] Section 45(3) of the Legal Services Act 2011 states:

In determining whether there are exceptional circumstances, the court may take account of, but is not limited to, the following conduct by the aided person:

- (a) any conduct that causes the other party to incur unnecessary costs.
- (b) any failure to comply with the procedural rules and orders of the court.

[14] FCL says Mr Makara caused it to incur unnecessary costs by pursuing his employment relationship problem, and requiring FCL to respond, while knowing FCL was in the process of being wound up and deregistered from the companies register.

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<sup>1</sup> *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135 at [114].

[15] Mr Makara did not cause FCL to incur unnecessary costs. The public notice gazetted by the companies office, advised that any objection to FCL's removal from the companies register needed to be lodged by 18 February 2026.

[16] Therefore, until 18 February 2026, it remained unclear whether FCL would be removed from the companies register. Accordingly, Mr Makara had a right to pursue his claims against FCL.

[17] The investigation meeting was scheduled to occur on 9 February 2026.

[18] I am not satisfied that any of the exceptional circumstances described in section 45(3) of the Legal Services Act 2011, have been made out.

[19] Therefore, no order for costs may be made against Mr Makara.

### **Outcome**

[20] FCL's application for costs does not succeed. Costs will lie where they fall.

Simon Greening  
Member of the Employment Relations Authority