

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 212  
5376041

BETWEEN                      JENNIFER DILLON  
   Applicant  
  
A N D                              GENERAL    DISTRIBUTORS  
   LIMITED  
   Respondent

Member of Authority:        James Crichton  
  
Representatives:              No appearance for Applicant  
   Christie Hall, Counsel for Respondent  
  
Submissions Received:      No submissions from Applicant  
   19 April 2013 from Respondent  
  
Date of Determination:      23 May 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive matter**

[1]     The applicant (Ms Dillon) raised a personal grievance against her former employer, the respondent (General Distributors). The matter was set down for an investigation meeting on 15 March 2013. The matter did not proceed on that date after Ms Dillon had dispensed with the services of her then counsel.

[2]     There was some intimation during March 2013 that Ms Dillon might not proceed with her claim at all and the Authority adjourned the investigation meeting sine die.

[3]     In doing so, the Authority made clear that if Ms Dillon was intent upon withdrawing her proceedings, she needed to come to terms with General Distributors in respect of costs because General Distributors had already incurred cost in preparing

for a hearing which did not take place and they were entitled to look to Ms Dillon to contribute to the cost expended.

[4] In the result, there was no agreement between the parties in respect to costs and the Authority is advised that counsel for General Distributors spoke to Ms Dillon on 4 April 2013 in which conversation Ms Dillon indicated her wish to withdraw her claim. That decision was subsequently confirmed formally by correspondence from the Authority dated 5 April 2013.

### **The application for costs**

[5] General Distributors, through counsel, seek a contribution to their costs which the Authority is advised are in the amount of \$11,250 plus GST.

### **The response**

[6] There has been no response from Ms Dillon. Counsel for General Distributors quite properly sent a copy of their submissions to Ms Dillon. The Authority's support officer has left two messages on Ms Dillon's telephone in the first half of this month but Ms Dillon has not responded.

[7] In all the circumstances, the Authority is not persuaded that the matter can be deferred indefinitely. The Authority is satisfied Ms Dillon has had an opportunity to be heard but has chosen not to engage.

### **Determination**

[8] The law in respect to costs fixing in the Authority is well settled and need not be recited here. It is a truism costs normally follow the event. Further, it is settled law that a party put to expense in defending a claim which is subsequently withdrawn without agreement as to costs, is entitled to look to a contribution to the costs it incurred, from the party withdrawing.

[9] Furthermore, in the particular circumstances of this case, Ms Dillon was warned by the Authority that if she was contemplating withdrawing the proceedings from the list, she risked being asked to contribute to General Distributors' costs.

[10] Throughout the Authority's process leading up to the aborted investigation meeting, Ms Dillon had difficulty engaging, despite having filed her proceedings

alleging personal grievance. As the Authority has already noted, Ms Dillon failed absolutely to engage with the Authority in respect to the fixing of costs and did not even take the Authority's point about engaging with her former employer before withdrawing the matter. It is plain to the Authority that Ms Dillon has not enjoyed good health of recent times, and it may be that her unwillingness to engage is a function of that poor health.

[11] Although Ms Dillon has not taken the opportunity of explaining her circumstances to the Authority, the Authority feels able to conclude from the process of managing the file to date that Ms Dillon may still be suffering from the ill health which clearly affected her ability to engage in the last month or so and the Authority is minded to exercise its discretion and take that health status into account.

[12] In all the circumstances, while the matter is finely balanced, the Authority thinks the justice of the case requires that no order for costs be made. It is acknowledged that the Authority itself warned Ms Dillon that if she did what she subsequently did, she was at risk of having a costs award made against her but the Authority feels obliged to conclude that her health has not allowed her to engage in a manner which would have produced a different result.

[13] That being the Authority's conclusion, costs are to lie where they fall.

**James Crichton**  
**Member of the Employment Relations Authority**