

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 346
3084852

BETWEEN Christopher Duckworth
Applicant

AND Rockgas Limited
Respondent

Member of Authority: Philip Cheyne

Representatives: Neil Walkinshaw, advocate for the Applicant
Rachel Brown and Helen Thompson, counsel for the
Respondent

Submissions Received: From the Respondent on 25 August 2020 and from the
Applicant on 27 August 2020.

Date of Determination: 28 August 2020

COSTS DETERMINATION OF THE AUTHORITY

**A. Christopher Duckworth is to pay Rockgas Limited \$2,250.00,
pursuant to clause 15 of Schedule 2 of the Employment Relations Act
2000.**

[1] At the end of the investigation meeting I reserved the determination. I also encouraged the parties to discuss a resolution of the claim. Later Mr Duckworth withdrew his claim.

[2] The respondent now seeks costs on a daily tariff basis. I am referred to the submissions given as part of the investigation meeting.

[3] Mr Walkinshaw says that neither party should be awarded costs.

[4] Mr Walkinshaw says that Rockgas decided to seek legal representation but need not have done so.

[5] The Authority's power to award costs is set out in Schedule 2 to the Employment Relations Act 2000. Although it is a discretionary power, it must be exercised justly in accordance with established principles. The starting point is that costs flow from the outcome. A successful party is normally entitled to a reasonable contribution to legal costs incurred. The Authority as a starting point looks to its practice note when asked to order costs.

[6] Mr Duckworth was entitled to commence the proceedings with or without legal assistance. Rockgas had to either concede or defend the proceedings, with or without legal assistance. If a party chooses to instruct counsel rather than dealing with matters themselves, it is not for me to question their choice. A party's view that the other party did not need to hire lawyers does not absolve them from risk of a costs award if they are unsuccessful.

[7] Mr Walkinshaw says that Mr Duckworth did not properly understand some events, wanted to discuss matters with his employer, made repeated attempts to do that and says that Rockgas could have engaged better with him and his representative at several points. I make no findings about those views as they relate to the grievance claim which is now withdrawn.

[8] However, the matter was directed to mediation in January after it was lodged in the Authority. That was the opportunity to canvass the points mentioned above. Even if matters are unresolved by mediation, an applicant might exercise their right to withdraw proceedings at an early stage afterwards with limited risk of being liable for an award of costs. The difficulty here is that Rockgas had to prepare and present its defence to the point of a concluded investigation meeting before Mr Duckworth withdrew his claim. In that circumstance, Rockgas must be regarded as the party who has been successful.

[9] I find that Rockgas Limited is entitled to an award of costs. Mr Duckworth's case was presented in an efficient manner and I see no reason to depart from the daily tariff scale. The meeting occupied just over a half day investigation. I fix the appropriate award of costs at a half day applied to the tariff rate for the first day of a matter. That results in an order of \$2,250.00 for costs.

Philip Cheyne
Member of the Employment Relations Authority