



[3] On 9 October 2024 HFL withdrew its application. On the same day counsel for Mr James advised he had instructions to seek costs in relation to this matter. I directed the Authority Officer advise the representatives:

... costs applications when matters are withdrawn at an early stage, if successful, will generally result in a very modest contribution to costs, if any. In light of this, the parties may wish to consider whether incurring further costs is prudent or this is a matter where costs should lie where they fall.

[4] Subsequently a costs application was made on behalf of Mr James on 23 October 2024. HFL's representative advised on 8 November 2024 it was not "prepared to enter into discussions in regard to costs" and counsel for Mr James requested on 11 November 2024 that I proceed to determine the costs application.

[5] As no costs submissions have been received for HFL, I now proceed to determine the matter.

### **Contribution to Costs**

[6] The power of the Authority to award costs is contained in cl 15 of schedule 2 of the Act. The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.<sup>1</sup>

[7] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[8] This matter did not proceed beyond two case management conferences before it was withdrawn by HFL.

[9] Mr James submits a contribution to his costs of \$4,500 would be appropriate, as he was put to the cost and stress of this proceeding, requiring him to instruct legal representatives, take advice, provide a statement in reply, have his counsel attend two case management conferences and provide three memoranda. Mr James' actual costs are said to be more than this amount for what he claims was a "wholly misplaced" proceeding.

[10] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited)*

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<sup>1</sup> For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

*v Da Cruz*<sup>2</sup> as confirmed in *Fagotti v Acme and Co Limited*<sup>3</sup>. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful party's conduct.

[11] The Court has confirmed in *Kelleher v Wiri Pacific Ltd*<sup>4</sup> costs can be awarded against a discontinuing party up to the date of the discontinuance although that practice is not invariable and is subject to the Court's discretion. This approach has been followed in the Authority<sup>5</sup>, with an assessment of what costs have reasonably been incurred prior to proceedings being discontinued being required, including taking into account the stage during proceedings when a matter has been discontinued.

[12] In this matter I accept Mr James incurred the costs associated with drafting and lodging a statement in reply and attending two case management calls, which combined took less than one hour. The matter was discontinued before witness statements were due to be lodged. I consider this was at a relatively early stage in proceedings and only a modest contribution to costs is appropriate, which I fix at \$500.

### **Orders**

[13] Hardgrave Flooring Limited is ordered to pay to David James within 28 days of the date of this determination the sum of \$500 as a contribution to costs.

Shane Kinley  
Member of the Employment Relations Authority

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<sup>2</sup> [2005] 1 ERNZ 808.

<sup>3</sup> [2015] NZEmpC 135 at 114.

<sup>4</sup> [2012] ERNZ 406 at [11].

<sup>5</sup> For example in *Advance International Cleaning Systems (NZ) Ltd v Brown* [2017] NZERA Wellington 22 and *Davis Trading Company Ltd v Ueese* [2020] NZERA 136.