

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 247
3080433

BETWEEN ANDREAS JOE
 Applicant

AND JUKEN NEW ZEALAND
 LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: John Farrow and James Cowan, counsel for the
 Applicant
 Stephen Corlett, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and Further 29 May 2020 from the Respondent
Information Received: 9 June 2020 from the Applicant
 10 June 2020 from the Respondent
 10 and 11 June 2020 from the Applicant

Date of Determination: 25 June 2020

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Juken New Zealand Limited (Juken) has applied for costs against Mr Joe.

[2] Juken challenged the Authority’s jurisdiction to investigate Mr Joe’s claims. It sought to have the jurisdiction issue determined before mediation occurred, while Mr Joe wanted it determined after mediation. Juken also applied to have Mr Joe’s matter dismissed on the grounds it was frivolous and vexatious.

[3] The Authority issued a determination on the preliminary issues on 28 April 2020.¹ The Authority held that:

¹ *Joe v Juken New Zealand Limited* [2020] NZERA 167.

- (a) It did have jurisdiction to investigate Mr Joe’s breach of contract and associated damages claim; and
- (b) Mr Joe’s Authority proceedings were not frivolous and/or vexatious, so should not be dismissed.

[4] The Authority directed the parties to mediation. Shortly before mediation was due to occur Mr Joe withdrew his Authority proceedings.

[5] Mr Joe in his costs submissions said he withdrew his claims before attending mediation because Juken had told him it would not offer him any financial settlement at mediation.

[6] Mr Joe therefore formed that view that mediation would be fruitless and continuing with his claims would only increase his legal costs and stress. On that basis, Mr Joe advised the Authority on 21 May 2020 that he had decided to withdraw his claims. Mr Joe also proposed to Juken in a “*without prejudice except as to costs*” letter dated 21 May 2020 that costs should lie where they fell.

[7] Juken is not entitled to an award of costs in its favour because it was unable to satisfy the Authority that it was “*the successful party*”.

[8] Juken’s challenge to the Authority’s jurisdiction to investigate Mr Joe’s matter was unsuccessful. Mr Joe also successfully resisted Juken’s application to have his proceedings struck out. Accordingly, Juken’s costs application does not succeed.

[9] In accordance with paragraph 14 of Mr Joe’s costs submissions, the Authority orders that costs in this matter shall lie where they fall.

Rachel Larmer
Member of the Employment Relations Authority