

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 179/08
5122801

BETWEEN

HELEN KIDD
Applicant

AND

THE PRENZEL DISTILLING
COMPANY LIMITED
Respondent

Member of Authority: Philip Cheyne

Representatives: Claire Nickalls, Representative for Applicant
Luke Radich, Counsel for Respondent

Submissions Received: 28 October & 12 November 2008 for the Applicant
10 November 2008 for the Respondent

Determination: 27 November 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] Ms Kidd withdrew her personal grievance claim shortly before the date set for the investigation meeting. Prenzel Distilling Company Limited now seeks an order of costs against her. Ms Kidd says that costs should lie where they fall. This determination resolves the disputed question of costs.

[2] In August 2008 this matter was scheduled for an investigation meeting on 23 October 2008. These arrangements were made with Ms Nickalls as the applicant's representative and Mr Steadman as a principal of the respondent company. The applicant was to lodge witness statements by 3 October and the respondent by 13 October. However, the applicant's representative emailed the Authority on 25 September saying that she was instructed to withdraw the application and would send a letter *in the next couple of days*. No letter arrived. On or about 7 October Mr Steadman contacted the Authority support officer having not received any witness statements from the applicant. He then learnt of the applicant's intention to withdraw the application.

[3] On 28 October 2008 the Authority received a memorandum from counsel now acting for the company claiming \$2,500.00 as a contribution to legal costs incurred in defending the proceedings. There had been no earlier indication to the Authority that the respondent was legally represented. The applicant learnt of counsel's involvement shortly before the Authority did.

[4] Counsel and representative both make points about the substance and genuineness of the personal grievance claim. There is nothing before the Authority to permit any conclusions to be drawn one way or the other that have a bearing on costs.

[5] I have not been given any details of costs actually incurred or the work done. The file shows a concise statement of problem, a brief hand written statement in reply and one phone conference of short duration. There is nothing on the file to indicate any legal work by solicitors in connection with the proceedings. It may be that legal fees relate to advice during the restructuring that resulted in the redundancy dismissal and/or subsequent mediation. If so, that is not recoverable in connection with these proceedings. On the material available to me, I am not satisfied that any legal fees were incurred in connection with the proceedings prior to their withdrawal at short notice before the investigation meeting. On that basis it would not be appropriate to make an award of costs in favour of the respondent.

[6] In part the respondent's claim is based on inconvenience caused by the late withdrawal. The applicant's representative says that she wrote to Mr Steadman. I have not seen this letter and nor has Mr Steadman. Mr Steadman first learnt of the intended withdrawal by speaking with the support officer about 7 October. He should have been told earlier. An applicant who withdraws their application must advise the other parties. Ordinarily a support officer will inform a respondent if the Authority receives such a communication but that does not absolve the applicant of the obligation to tell the other party. The applicant's failure here no doubt caused unnecessary inconvenience and wastage for Mr Steadman and the company; but I am not satisfied that it caused or increased legal costs.

[7] There will be no order of costs.

Philip Cheyne
Member of the Employment Relations Authority