

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 32/09
5123488

BETWEEN

JAE SEOK KIM
Applicant

AND

HAEMIN CORPORATION
LIMITED
Respondent

Member of Authority: Paul Montgomery

Representatives: Andrew McKenzie, Counsel for Applicant
Rebecca Hopkins, Counsel for Respondent

Submissions received: 30 October 2008 for the Respondent
1 December 2008 for the Applicant

Determination: 17 March 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] This matter was scheduled for investigation at a meeting on 25 September 2008.

[2] The applicant unexpectedly returned to Korea for medical treatment leaving Mr McKenzie without detailed instructions. Counsel sought an adjournment of the fixture requesting the matter be allowed to lie in abeyance.

[3] Ms Hopkins resisted this suggestion on the ground that it would prejudice her client due to the continuing uncertainty and indeterminate delay that it would cause her client.

[4] The Authority issued a minute to counsel on 2 September 2008 declining adjournment but restricting the investigation to the disputed jurisdictional issues.

[5] On 22 September 2008 counsel for the applicant advised he was instructed to withdraw the application. The respondent seeks costs incurred in the preparation of its defence of between \$1,500 - \$2,000 against actual solicitor-client costs of \$4,200. Further, Ms Hopkins urged the Authority to consider a range of precedents in the Employment Court relating to costs where withdrawal has brought an end to proceedings.

[6] For the applicant, Mr McKenzie submits that the cases cited had little precedent value as *PBO v. Da Cruz* [2005] 1 ERNZ 808 made it clear the principles applying to costs awards in the Authority differ from those applicable to the Court. While that is so, the Authority needs to take into account the complexities of this particular matter and the preparation undertaken by the respondent's counsel to resist the application.

[7] The Authority accepts there were no significant intentional breaches of directions by either party and the withdrawal of the application for the reasons given does not indicate that the applicant's claim was either frivolous or vexatious. The submission of Ms Hopkins in respect to a reasonable contribution to costs has been noted.

[8] Having weighed the matter in its entirety, I am not satisfied the present case is one where it is just to let costs lie where they have fallen as I have been encouraged by Mr McKenzie.

[9] I award the respondent costs of \$850 as a contribution to the reasonably incurred costs of the respondent.

Paul Montgomery
Member of the Employment Relations Authority