IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

CA 115/10
5279177

	BETWEEN	STEPHANIE MILLER Applicant
	A N D	PIT STOP COURIERS (2005) LIMITED Respondent

Member of Authority:	James Crichton
Representatives:	Georgina Burness, Advocate for Applicant Pat Weeks, Advocate for Respondent
Submissions Received:	22 April 2010 from Applicant 30 March 2010 from Respondent
Determination:	11 May 2010

COSTS DETERMINATION OF THE AUTHORITY

Application for costs

[1] This matter proceeded to an investigation meeting in the Authority on 11 March 2010. At the conclusion of the taking of the evidence, it was agreed that the parties would explore the prospect of resolving matters on their own terms and, if that approach failed, then submissions would be filed in the usual way and the matter would be determined by the Authority.

[2] In the result, the employment relationship problem was resolved by the applicant withdrawing her claim but without the issue of costs being resolved.

The claim for costs

[3] Both parties have filed an application for costs, the applicant in the sum of $1,462 and the respondent in the sum of $4,750.

[4] In this relatively unusual situation, the principles normally applied by the Authority are not all of them relevant. In particular, the common adage that costs follow the event cannot apply in the present case because the claim of the applicant was simply withdrawn before the determination issued. However, it is fair to conclude that the respondent was put to significant trouble and expense in defending a claim in the Authority which was then withdrawn by the applicant before determination. The applicant's submission not only seek costs against the respondent but also make no comment about the respondent's claim for costs.

[5] On the face of it, neither party would have incurred costs if the applicant had not chosen to launch her claim. Certainly it is unreasonable for the applicant to expect that the respondent should meet her costs in the absence of any agreement between the parties. One would have thought that if the applicant was going to withdraw her claim she would have done it after reaching an understanding with the respondent about costs.

[6] As it is, with the claim withdrawn and no agreement about costs, the applicant, as the initiator of the costs for both parties, is at risk of a costs award against her that has the effect of not only requiring her to meet her own costs (which she is responsible for anyway) but also meeting the costs of the respondent, or at least a reasonable contribution to those costs.

Discussion

[7] In the end, all that the Authority can do in this unusual position is apply the usual approach to costs fixing. This matter was dealt with in the Authority in half a day and on that basis, if the daily tariff approach were used, a contribution from the applicant to the respondent of perhaps $1,700 would be appropriate.

[8] Even an approach such as that puts the respondent employer at a very significant disadvantage in that they have had to fund the defence of a claim which, whatever its merits, was withdrawn before the Authority determined it. This is not a situation where the respondent employer is a vibrant and ongoing business with strong profits and good cashflows. This is effectively a one-person business which has fallen upon hard times. Conversely, the applicant is clearly not in a strong financial position either. Indeed, her advocate, in filing a costs submission, appears to be seeking the payment of costs for the applicant by the respondent.

Determination

[9] In all the circumstances, the only proper result must be for Ms Miller, the applicant, to make a contribution to the respondent's costs and I direct that she contribute the sum of $1,000 to the respondent's costs. It is appropriate that Ms Miller have time to pay those costs and a time payment arrangement may need to be worked out.

James Crichton
Member of the Employment Relations Authority