IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2020] NZERA 360
3080132

BETWEEN   RICKI MORRISON
                 Applicant

AND   MAGNUM HIRE LIMITED
                 Respondent

Member of Authority:	Eleanor Robinson
Submissions received:	None from Applicant 10 August 2020 from the Respondent
Determination:	4 September 2020

COSTS DETERMINATION OF THE AUTHORITY

[1]   The Applicant, Mr Ricki Morrison, filed a Statement of Problem with the Authority on 4 November 2019 claiming unjustifiable dismissal and non-payment of monies due on termination.

[2]   By way of a Statement in Reply filed on 22 November 2019 the Respondent, Magnum Hire Limited (Magnum) denied the claims made by Mr Morrison.

[3]   The investigation meeting was scheduled to be held on 14 July 2020 after witness statements had been filed and served and a common bundle of documents prepared and filed with the Authority.

[4]   The scheduled timetable not having been adhered to, the Authority made enquiry of the parties and on 23 July 2020, notification was received by the applicant's representative, withdrawing the claim from the Authority and the investigation meeting did not proceed.

[5]   Magnum is now seeking a contribution to costs in relation to this matter. Magnum submitted that it incurred actual costs in the amount of $4,743.00 plus GST and disbursements of $50.00.

Determination

Principles

[6]   The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

> **15 Power to award costs**
>
> (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
>
> (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[7]   The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*[1] as confirmed in *Fagotti v Acme & Co Ltd.*[2]

[8]   It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*[3] that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*[4] at para [48] *"As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred."*

[9]   The Authority's jurisdiction in respect of costs extends to a situation in which an Applicant elects to withdraw a proceeding at any stage prior to issue of determination. However, whilst I have discretion in considering whether or not a party's costs were necessary or unreasonable, it is incumbent upon me that I approach the question of costs in a principled manner and not arbitrarily. The primary principle is that costs follow the event.

[10]   I accept that in this case, whilst Magnum did not incur the expense associated with attendance at an Authority investigation, it has nonetheless been put to some expense in taking steps to defend the claims made by Mr Morrison at the scheduled investigation meeting. These steps have included the drafting of affidavits and submissions.

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[1] [2005] 1 ERNZ 808
[2] [2015] NZEmpC 135 at [114]
[3] [2005] 1 ERNZ 808
[4] [2001] ERNZ 305

[11]   Costs in the Authority are normally awarded on the basis of a daily tariff which equates to $4,500.00 for a full day of an investigation meeting hearing.

[12]   In this case the matter was discontinued by Mr Morrison prior to an investigation meeting taking place. Notwithstanding the Authority has the discretion to determine costs as appropriate.

[13]   Having fully considered this matter, I consider it appropriate that the Applicant make a contribution to the legal costs of the Respondent.

[14]   Accordingly Mr Morrison is ordered to pay Magnum the sum of $2,000.00 towards its legal costs.

Eleanor Robinson
Member of the Employment Relations Authority