

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 406  
5388508

BETWEEN

RACHEL PERENIKI  
Applicant

AND

THORNTON PARK  
RETIREMENT LODGE  
LIMITED  
Respondent

Member of Authority: Rachel Larmer  
Representatives: No appearance for Applicant  
Rose Alchin, Counsel for Respondent  
Investigation Meeting: On the papers  
Submissions Received: 04 September 2012 from Respondent  
Date of Determination: 16 November 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A. Rachel Pereniki is ordered to pay Thornton Park Retirement Lodge Limited \$500 towards its legal costs.**

**Employment relationship problem**

[1] Thornton Park Retirement Lodge Limited (Thornton) applies for a costs order against Ms Pereniki.

[2] Ms Pereniki lodged a statement of problem with the Authority on 9 July 2012 which was served on Thornton Park Retirement Lodge Limited (Thornton) on or about 17 July 2012. Ms Pereniki claimed she had been constructively dismissed.

[3] Having been served with the statement of problem, Thornton engaged counsel to prepare a statement in reply which set out a comprehensive defence to

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Ms Pereniki's claims. Thornton submits that the filing of its statement in reply was a lengthy process given the background to the event which gave rise to Ms Pereniki's dismissal claim and the need for it to rebut a number of claims she had made.

[4] Thornton says that in order to address Ms Pereniki's constructive dismissal claim it needed to provide information to the Authority which showed that she had many other options open to her other than to resign her employment. It therefore says it was required to provide a great deal of background information and documentation with its statement in reply because of the nature of the allegations against it.

[5] Thornton also says that it took Ms Pereniki's claims very seriously and wished not only to rebut those claims but also to protect itself and its business reputation going forward. It therefore said it decided to file a comprehensive and thorough statement in reply to which it attached all of the documents which it says were relevant to its defence of Ms Pereniki's claim.

[6] The Authority indicated to the parties on 13 August 2012 that it intended to set the matter down in October and within a few days of that advice Ms Pereniki's then representative, Mr Kerry Singleton, advised the Authority that he had instructions to withdraw Ms Pereniki's claim *as she cannot afford to proceed any further*.

[7] Thornton said that by the time this matter had been withdrawn it had incurred legal costs of \$4,830 GST inclusive which represented 12 hours of counsel's time at a charge out rate of \$350 per hour plus GST.

[8] Thornton says that it is difficult to see what could have changed to so significantly alter Ms Pereniki's position in the six weeks between the filing of her statement of problem and her decision to withdraw her claims. Thornton rightly submits that Ms Pereniki's financial ability to pursue her claim is one which ought reasonably to have been considered prior to commencing her action and putting it to the attendant cost of defending the matter.

[9] Thornton says that Ms Pereniki's withdrawal came immediately on the heels of being served with its statement in reply so it submits that the far more likely scenario is that when presented with the strength of its case, the futility of her action was apparent to her which lead to her withdrawal of the proceedings.



[10] Thornton asks the Authority for a costs award in its favour to compensate it for what it submits were the unnecessary, unreasonable, and wholly avoidable legal expenses to which it has been subjected.

[11] Ms Pereniki did not file any submissions in respect of Thornton's costs application and the Authority has no information about her personal or financial circumstances.

### **Outcome**

[12] Costs are discretionary. It can be said that Thornton was successful in this matter because Ms Pereniki withdrew her claims shortly after receiving its statement in reply.

[13] I accept that Thornton was put to the cost of preparing a comprehensive statement in reply which attached significant documentation in support of its position so I consider there should be some recompense of that by way of an award of costs.

[14] The Authority's usual approach to costs is to adopt a notional daily tariff which is currently \$3,500 which is then adjusted in a principled way to reflect the particular circumstances of the case. I consider that there are no factors which would warrant an increase to the notional daily tariff.

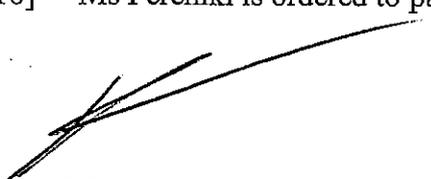
[15] I consider that because the matter was withdrawn at an early stage, so Thornton only incurred the cost of filing a statement in reply, that is a factor which should result in a substantial decrease to the notional daily tariff.

[16] The level of costs awarded must reflect that this matter did not proceed to a substantive investigation meeting so Thornton was not required to brief witnesses or to prepare a joint bundle or legal submissions in respect of its case. These are all matters which are usually undertaken in the course of many substantive investigation meetings.

[17] I consider that a \$3,000 reduction to the notional daily tariff is appropriate to reflect that this matter was withdrawn at an early stage which reduces the costs to be awarded to \$500.



[18] Ms Pereniki is ordered to pay Thornton \$500 towards its actual legal costs.

  
**Rachel Larmer**  
**Member of the Employment Relations Authority**

