

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2024] NZERA 654
3171883

BETWEEN MICHAEL RAWIRI TAIA
Applicant

AND AKE INNOVATION
LIMITED
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: No appearance from the Applicant
Steve Franklin, counsel for the Respondent

Submissions and further Up to and including 18 September 2024
information received:

Determination: 4 November 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 27 November 2023 the Authority declined Mr Taia's application for an order that Ake Innovation Limited (Ake) comply with the terms of a settlement the parties concluded pursuant to s 149 of the Employment Relations Act 2000 (the Act).¹

[2] The Authority reserved the issue of costs. Mr Taia filed a statement of claim in the Employment Court seeking a full hearing of the entire matter. Ake then lodged a claim for costs in the Authority on 13 December 2023. Mr Taia sought an order from the Authority staying the decision on awarding costs which was declined.

¹ *Michael Rawiri Taia v Ake Innovation Limited* [2023] NZERA 709.

[3] Mr Taia's submissions on costs were timetabled and no submissions were received.

Submissions

[4] Ake submits this is a case where the Authority should award increased costs because:

- (a) the pleaded causes of action had little or no prospect of success;
- (b) arguments were advanced that had little prospect of success; and
- (c) Mr Taia's own conduct unnecessarily increased the costs of Ake.

[5] Ake submits Mr Taia did not come to this matter with clean hands. Assertions of dishonesty were made whereby it is alleged Mr Taia sought to profit from that dishonesty. In essence the submission is that Mr Taia was aware at all times that the matters about which he complained of were caused by his own actions but he still sought to seek financial compensation from Ake in relation to the complaints.

[6] Mr Taia touched on the merits of his case and his opposition to Ake's submissions on costs when he corresponded with the Authority in relation to his application for a stay of proceedings. Mr Taia rejected completely Ake's submission that Mr Taia's application for compliance had little or no prospect of success or that by his own conduct Mr Ake has unnecessarily increased the costs of Ake, as the successful party.

Costs

[7] Costs are a matter of discretion. The discretion is to be exercised in accordance with principle and not arbitrarily. The main principle in the exercise of the discretion is that costs follow the event. If a party is successful, they will be entitled to an award of costs. Ake was successful in that Mr Taia's application for a compliance order against Ake was unsuccessful.

[8] The starting point for costs based on the Authority's daily tariff is \$4,500.00 for the first day and \$3,500.00 for each additional day. From that starting point the Authority can consider whether there are factors justifying an increase or decrease in costs. The investigation meeting took half a day and a submissions hearing was

convened by AVL at a later date which took 1½ hours. I adopt a starting point of \$4,500.00.

[9] The applicant is entitled to bring his employment relationship problem to the Authority for resolution. I have considered the points put forward by Ake in support of an uplift however see no need to depart from the usual tariff in this case. I consider an award of \$4,500.00 to be appropriate.

Orders

[10] Michael Rawiri Taia is to pay Ake Innovation Limited \$4,500.00 as a contribution towards legal costs.

Sarah Kennedy-Martin
Member of the Employment Relations Authority