



Employment Court of New Zealand

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Wright v West Auckland Aquatics Inc [2016] NZEmpC 140 (2 November 2016)

Last Updated: 8 November 2016

IN THE EMPLOYMENT COURT AUCKLAND

[\[2016\] NZEmpC 140](#)

EMPC 58/2016

EMPC 157/2016

EMPC 58/2016
IN THE MATTER OF a challenge to a determination of
the
Employment Relations Authority

EMPC 157/2016 of proceedings removed
AND IN THE MATTER

BETWEEN DAVID WRIGHT Plaintiff

AND WEST AUCKLAND AQUATICS INC
First Defendant

AND SUSAN TURNER Second Defendant

Hearing: On the papers filed on 23 September
2016

Appearances: G Pollak, counsel for plaintiff
No appearance for first defendant
R Siciliano, counsel for second
defendant

Judgment: 2 November 2016

COSTS JUDGMENT OF JUDGE M E PERKINS

[1] These proceedings involve a challenge against a determination of the Employment Relations Authority (the Authority) dated 9 February 2016.¹ That determination related to an application seeking compliance with a mediated settlement agreement. The determination also dealt with applications for penalties and costs.

[2] Mr Wright, the plaintiff, was unsuccessful in proceedings before the Authority. Following that determination, he lodged a further statement of problem with the Authority on 15 February 2016. That statement of problem sought an order that he had been unjustifiably dismissed by the first defendant and he also sought remedies against the second defendant.

[3] In a determination dated 5 July 2016 the Authority made an order removing the further proceedings to the Employment Court.²

[4] Once the determination was made removing the further proceedings to the Court, the Court directed that the plaintiff file an amended statement of claim consolidating the original challenge and the causes of action in the proceedings removed to the Court. Timetabling directions were given as to the filing date and service of the amended statement of claim, and setting time for the defendants to file statements of defence. At that stage, no indication had been given that the first defendant was intending to participate in the proceedings, and in fact it has never done so.

[5] Once the amended statement of claim was filed and served and the second defendant, Susan Turner, had filed a statement of defence to the amended statement of claim, a further directions conference was convened for the purposes of advancing the proceedings. At that stage the first defendant had taken no steps in any of the proceedings. It had previously been removed from the Register of Incorporated Societies but by the time of the filing of the amended statement of claim it had been restored to the Register.

[6] At a directions conference on 23 August 2016, timetabling directions were made in respect of the proceedings between the plaintiff and the second defendant. A hearing date was set for 7 and 8 November 2016.

[7] On 16 September 2016, the plaintiff filed a notice of discontinuance of the proceedings against both the first and second defendants. As a result of the filing of the notice of discontinuance, the hearing date allocated was vacated.

[8] Following the filing of the notice of discontinuance, the second defendant, Ms Turner, made an application for costs. At the directions conference on 23 August

2016 counsel had agreed that for costs purposes under the Court's Practice Direction

Guideline Scale, Category 2B would apply to the matter.

[9] The memorandum now filed on behalf of the second defendant seeking costs sets out a calculation in accordance with sch 3, cl 19 of the [Employment Relations Act 2000](#) and the practice direction relating to scale costs. Counsel for the plaintiff has been given the opportunity to file a memorandum in response on costs. However, Mr Pollak, counsel for the plaintiff, indicates that he is unable to obtain instructions from the plaintiff in respect of costs. At the time of filing the notice of discontinuance Mr Pollak indicated that he was no longer acting for Mr Wright. However, Mr Pollak has taken no steps pursuant to the Court Rules which would entitle him to withdraw from acting in the matter at this stage.

[10] It is now clear that the plaintiff does not intend to participate further in these proceedings now relating to costs. The schedule of costs and disbursements claimed by Ms Turner against Mr Wright, as attached to the memorandum of her counsel, discloses that the sum sought is \$10,704. This calculation has been properly made pursuant to the Practice Direction Guideline Scale and it is appropriate that an award be made for that sum. No disbursements are sought.

[11] Accordingly, the plaintiff, David Wright, is ordered to pay costs to the second defendant, Susan Turner in the sum of \$10,704. In addition the Authority's award of costs in its determination of 9 February 2016 remains in force.

M E Perkins

Judge

Judgment signed at 12.45 pm on 2 November 2016

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