

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2020] NZEmpC 212
EMPC 465/2019**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for costs

BETWEEN BR & SL PORTER LIMITED
Plaintiff

AND JAMES HIGGS
Defendant

Hearing: On the papers

Appearances: M Beech, counsel for plaintiff
P Mathews, advocate for defendant

Judgment: 1 December 2020

JUDGMENT OF JUDGE KATHRYN BECK

[1] The defendant applies for costs following the plaintiff's notice of discontinuance filed on 9 September 2020.

[2] The parties attempted to resolve costs but were unable to do so.

[3] In a directions conference minute dated 5 May 2020, the proceeding was provisionally assigned Category 1B for costs purposes under the Court's Guideline Scale.¹

¹ "Employment Court of New Zealand Practice Directions" <www.employment.govt.nz> at No 16.

[4] The defendant says that costs on a 1B basis would be \$7,155. However, he only incurred costs of \$4,950 (plus GST). His advocate seeks costs of \$5,692.50 (including GST) because the defendant is not GST-registered. I note that the 1B calculation also includes provision for a witness brief although no briefs were filed.

[5] The plaintiff submits that costs should lie where they fall on the basis that it sought to bring long-running litigation to a close in the interests of both parties, despite the challenge having merit. In the alternative, counsel submits that costs should not exceed \$1,272.00. He calculates this on a 1A basis and discounts for costs he considers will have been incorporated in the previous costs decision of this Court in relation to an application for a stay of proceedings.²

[6] Costs in relation to a previous interlocutory matter were dealt with at the time and so all that remains for the Court to determine is what, if any, costs arise from the discontinuance and the directions conference.

[7] The general rule is that, in the absence of agreement, costs will follow a discontinuance. The defendant is entitled to a contribution to the costs incurred in defending this proceeding.

[8] However, I do not accept that the contribution sought by the advocate for the defendant is reasonable in all of the circumstances. Two documents were filed – a brief statement of defence and a short memorandum for a directions conference. There was also a brief attendance at a case management conference. Standing back, I consider that a reasonable contribution to the defendant’s costs on the plaintiff’s discontinuance is \$2,000.

[9] The defendant seeks an uplift to reflect his GST status, namely his inability to claim the GST component of his legal costs back from Inland Revenue. The above sum includes an uplift for GST, which I accept is appropriate.³

² *BR & SL Porter Ltd v Higgs* [2020] NZEmpC 119.

³ *New Zealand Venue and Event Management Ltd v Worldwide NZ LLC* [2016] NZCA 282, (2016) 23 PRNZ 260; *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 159.

[10] Accordingly, I order that the plaintiff pay the defendant the sum of \$2,000.
That sum is to be paid within 20 working days of the date of this judgment.

Kathryn Beck
Judge

Judgment signed at 1.30 pm on 1 December 2020