

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

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

**[2022] NZEmpC 158  
EMPC 148/2022**

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

AND IN THE MATTER    of an application for costs

BETWEEN                CRAIG WARREN ELS  
   Plaintiff

AND                        ENTELAR LIMITED  
   Defendant

Hearing:                On the papers

Appearances:        E Lambert, advocate for plaintiff  
   E Butcher, counsel for defendant

Judgment:             29 August 2022

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**COSTS JUDGMENT OF JUDGE B A CORKILL**

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[1]      A challenge to a determination of the Employment Relations Authority, which dealt with an application for interim reinstatement, was withdrawn at the initial timetabling conference after discussion with the bench as to whether it was misconceived.<sup>1</sup>

[2]      This was because the statement of claim raising the challenge sought substantive relief from the Court, which was not available by challenging a determination as to interim reinstatement. The Court was also advised that the plaintiff was no longer seeking reinstatement in any event.

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<sup>1</sup>      *Els v Entelar Ltd* [2022] NZERA 148 (Member Robinson).

[3] In granting leave for the withdrawal, I reserved costs, expressing the expectation that this would be capable of resolution with the representatives.

[4] Surprisingly, agreement as to costs was not reached. The defendant then filed a memorandum seeking costs on a Band B, Category 2 basis, being \$1,434.<sup>2</sup>

[5] The defendant also sought \$1,200 for preparing the costs memorandum, and in attempting to resolve costs issues.

[6] For the plaintiff, a response was filed, stating that costs should not be awarded because the substantive matter had not yet been heard in the Authority. No submission was made opposing the quantum of costs sought in this Court. Also opposed was the defendant's application for costs incurred in preparing the costs memorandum.

[7] The position in the Authority is not relevant to the application for costs now made in this Court. A misconceived step was taken in the Court, and the defendant is entitled to the costs incurred in dealing with that exercise.

[8] In short, costs must follow the event in the usual way. It is well established that this applies to any situation which amounts to being a discontinuance, unless the party who discontinues can persuade the Court that this presumption should be displaced.<sup>3</sup> I am not so persuaded. Moreover, the defendant is entitled to a contribution for the step of having to prepare a costs memorandum.

[9] That all said, I am not satisfied that costs on a 2B basis are appropriate for the nature of the proceedings and the limited attendances undertaken for the defendant. No statement of defence was filed. A modest contribution to the costs incurred in attending a telephone directions conference is appropriate on a category 2A basis. Similarly, a contribution only to the costs incurred in preparing the costs memorandum should be awarded.

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<sup>2</sup> Employment Court "Employment Court of New Zealand Practice Directions" <[www.employment.gov.nz](http://www.employment.gov.nz)> at No 16. Based on Items 11 and 13 of the Guideline Scale as to Costs, preparation and appearance at a telephone directions conference.

<sup>3</sup> *Wendco (NZ) Ltd v Unite Inc* [2019] NZEmpC 29 at [4].

[10] Standing back, I order the plaintiff to pay the defendant the sum of \$1,200 as a contribution to its costs.

B A Corkill  
Judge

Judgment signed at 9.30 am on 29 August 2022