

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

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

**[2024] NZEmpC 38
EMPC 308/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for costs
BETWEEN	THE PHO HOUSE LIMITED T/A ZEKE Plaintiff
AND	TYLER BRANFORD Defendant
Hearing:	On the papers
Appearances:	No appearance for the plaintiff S Greening and K Hudson, counsel for defendant
Judgment:	6 March 2024

COSTS JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

[1] The plaintiff has filed a notice of discontinuance. As is well-established, a plaintiff may discontinue their proceedings at any stage before judgment is given but is, absent agreement, liable to costs on the discontinuance.¹ There has been no agreement as between the parties and the defendant has applied for costs. The plaintiff has taken no steps in respect of the defendant’s application, despite the Registry having drawn it to their attention and confirming the applicable timetabling orders made to progress it. In the circumstances, I proceed to deal with the application on the basis of the material before the Court.

¹ *Kelleher v Wiri Pacific Ltd* [2012] NZEmpC 98, [2012] ERNZ 406.

[2] At the outset the proceedings were assigned Category 2B for costs purposes, under the Court's Practice Direction Guideline scale.² Costs calculated according to scale amount to \$9,799. The defendant is legally aided, and has incurred costs of \$1,962. It is that figure which the defendant seeks, and which I am satisfied is appropriate.

[3] The plaintiff is accordingly ordered to pay to the defendant the sum of \$1,962 by way of costs within 14 days of the date of this judgment.

Christina Inglis
Chief Judge

Judgment signed at 1.15 pm on 6 March 2024

² "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 18.