

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 456  
3034471

BETWEEN

AHMED ALKAZAZ  
Applicant

AND

DELOITTEASPARONA  
LIMITED  
Respondent

Member of Authority: Vicki Campbell  
Representatives: Applicant in person  
June Hardacre for Respondent  
Submissions received: 9 May 2019 from Applicant  
22 May 2019 from Respondent  
Determination: 2 August 2019

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A. Mr Alkazaz is ordered to pay to DeloitteAsparona Limited the sum of \$4,500 as a contribution toward costs within 28 days of the date of this determination.**

[1] In a determination dated 11 April 2019 I held a record of settlement entered into between Mr Alkazaz and DeloitteAsparona Limited to be binding and enforceable.<sup>1</sup> As a result of my finding that the record of settlement was binding I declined Mr Alkazaz's applications for personal grievances and for the imposition of penalties.

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<sup>1</sup> *Alkazaz v Asparona Limited & 2 Ors* [2019] NZERA 215.

[2] I reserved costs and invited the parties to resolve the issue between them. The parties have been unable to resolve the matter and they have lodged costs memorandum seeking a determination of the issue of costs.

[3] Mr Alkazaz has filed a challenge to the Authority's determination in the Employment Court. In such situations the Authority will usually proceed to determine costs. The Court's practice directions allow a costs challenge to be incorporated into the plaintiff's existing challenge to the Authority's substantive determination.<sup>2</sup>

[4] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.<sup>3</sup> The principles applying to costs are well settled and do not require repeating.<sup>4</sup>

[5] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.<sup>5</sup> The investigation meeting took one day so the starting point is \$4,500.

[6] As the successful party DeloitteAsparona seeks an uplift in costs on the basis that its costs were unnecessarily increased as a result of Mr Alkazaz's conduct. IN particular it says:

- a) Mr Alkazaz incorrectly recorded the respondent party on his statement of problem which resulted in DeloitteAsparona making applications to the Authority for leave to amend the intituling;

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<sup>2</sup> <https://justiceprod2-employmentcourt.cwp.govt.nz/assets/Documents/Publications/EMPLOYMENT-COURT-PRACTICE-DIRECTIONS-as-published-on-EC-Website20181214.pdf>

<sup>3</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>4</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

<sup>5</sup> Practice Note 2, Costs in the Employment Relations Authority.

- b) It had to respond to a statement of problem which contained a significant number of claims and propositions which were unsuccessful;
- c) Mr Alkazaz summonsed a witness which required preparation and whose evidence was not necessary;
- d) Was required to address communications about witness attendance which required substantially more correspondence than would usually be expected;
- e) DeloitteAsparona was put to the expense of amending submissions following further issues being raised during the Authority's investigation and Mr Alkazaz not being in a position to present oral submissions despite a direction by the Authority that both parties be prepared to do so; and
- f) Having to spend time following the investigation meeting considering facebook posts that were only presented at the investigation meeting.

[7] As is common in the Authority, Mr Alkazaz represented himself. The inquisitorial process allows for that situation. In such circumstances it is common for additional issues to be raised and addressed during the investigation meeting. It is also common for parties to produce additional documents as questions are asked and memories jogged.

[8] I am not convinced the correspondence about witnesses was unusual given Mr Alkazaz's choice to attend the Authority unrepresented. Also, in situations where one party is represented and the other is not, I will generally allow the unrepresented party some latitude when it comes to making submissions. This is in line with the objects of the Act as set out in Part 10 which recognises that the procedures for resolving employment relationship problems need to be flexible.

[9] I am not of a mind to increase the daily tariff and find that an appropriate order for costs is \$4,500. Accordingly, Mr Alkazaz is ordered to pay to DeloitteAsparona Limited the sum of \$4,500 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority