

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2019] NZERA 583  
3057552

BETWEEN	RAJDEEP BHOGAL Applicant
AND	INNOLIVE LIMITED Respondent

Member of Authority: Vicki Campbell

Representatives: Scott McKenna for Applicant  
Erin Burke for Respondent

Submissions received: 21 August and 5 September 2019 from Applicant  
18 September 2019 from Respondent

Determination: 11 October 2019

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A. Innolive Limited is ordered to pay to Mr Bhogal the sum of \$3,000 as a contribution to his costs within 28 days of the date of this determination.**

[1] In a determination dated 31 July 2019 I held Mr Bhogal was unjustifiably dismissed and declined his application that one or more conditions of his employment had been affected to his disadvantage by the unjustified actions of his employer. I also declined Innolive Limited's application for the imposition of penalties.<sup>1</sup>

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<sup>1</sup> *Bhogal v Innolive Limited* [2019] NZERA 450.

[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 memoranda seeking a determination on the issue. While I have not referred to all of the submissions advanced by the parties I have fully considered all material placed before the Authority.

[3] 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>2</sup> The principles applying to costs are well settled and do not require repeating.<sup>3</sup>

[4] 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>4</sup> The investigation meeting took one day so the starting point is \$4,500.

[5] The Authority will take into account any offers made by the parties to settle matters:<sup>5</sup>

The public interest in the fair and expeditious resolution of disputes would be undermined if a party were able to ignore a Calderbank offer without any consequences as to costs.

[6] In its submissions, Innolive Limited says an offer to settle matters with Mr Bhogal was made by telephone between the parties' representatives. The offer was for the payment of a fixed sum of \$5,000. Mr Bhogal was awarded a total of \$8,520 for lost wages and compensation.

[7] Mr Bhogal did not address the Calderbank offer in his submissions and so I have no information on which to conclude whether the rejection of the offer was reasonable.

[8] There was a mixed measure of success by both parties. Although Mr Bhogal was successful in his claim that he had been unjustifiably dismissed other aspects of his

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

<sup>3</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>4</sup> Practice Note 2, Costs in the Employment Relations Authority.

<sup>5</sup> As cited in *Bluestar Print Group NZ Ltd v Mitchell* [2010] NZCA 385 at [18].

claim were not successful. However, he was successful in defending the counter-claims against him. The situation of mixed success has been examined by the Court in *Coomer v JA McCallum and Son Limited*.<sup>6</sup>

[9] Ultimately I must stand back and look at things in the round.<sup>7</sup> Having done so Mr Bhogal must be considered the successful party. His key claim was that his dismissal was unjustified and I found that it was. Innolive successfully defended Mr Bhogal's claim that one or more conditions of his employment were affected to his disadvantage, but it was not successful in its counter claim against Mr Bhogal. Innolive Limited is ordered to contribute to the costs incurred by Mr Bhogal.

[10] The investigation meeting took less than one day including the issue of an oral determination. Witnesses were not required to provide written witness statements prior to the investigation meeting.

[11] Taking into account all of the circumstances I have concluded an appropriate contribution to Mr Bhogal's costs is \$3,000. Innolive Limited is ordered to pay to Mr Bhogal the sum of \$3,000 as a contribution to his costs within 28 days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority

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<sup>6</sup> *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

<sup>7</sup> *Ibid* at [43].