# Employment Court of New Zealand



## Catering Masters NZ Limited v Anand [2013] NZEmpC 166 (5 September 2013)

Last Updated: 13 September 2013

**IN THE EMPLOYMENT COURT AUCKLAND**

**[2013] NZEmpC 166**

**ARC 52/12**

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND IN THE MATTER of an application for costs

BETWEEN CATERING MASTERS NZ LIMITED Plaintiff

AND SACHIN ANAND Defendant

Hearing: By submissions filed by the plaintiff and defendant on

7 August 2013

Appearances: Mr Shean Singh, counsel for plaintiff

Mr David Vinnicombe, advocate for defendant

Judgment: 5 September 2013

**COSTS JUDGMENT OF JUDGE CHRISTINA INGLIS**

[1] In my substantive judgment of 18 July 2013,[1] I dismissed the plaintiff 's challenge to the Employment Relations Authority's (the Authority) determination.[2] I invited the parties to attempt to agree to costs but they have been unable to do so and have filed memoranda.

[2] The defendant seeks an award of $7,040.63 by way of contribution to his legal costs in this Court. This represents more than 66 percent of the costs actually incurred by the defendant in responding to the plaintiff's challenge. He submits that

such an award is appropriate having regard to a number of allegedly aggravating

factors. The defendant also seeks costs in relation to the Authority's investigation meeting, in the sum of $1,500, disbursements of $109.36, and an award of interest.

[3] Mr Singh, counsel for the plaintiff, submits that no costs should be awarded in relation to the Authority's investigation as no order for costs was made by the Authority and there was no cross-appeal on this issue. In relation to the costs contribution claimed in this Court, counsel submits that the matter was simple, lasted only one day, and that although the plaintiff failed in its challenge the compensation awarded against it was at the "high end". However, it is accepted on behalf of the plaintiff that costs should follow the event. It is submitted that an award of $1,000 would be appropriate.

[4] The principles relating to costs awards in this Court are well established.[3]

Clause 19(1) of sch 3 to the Employment Relations Act 2000 (the Act) confers a discretion as to costs. It provides that:

(1) The court in any proceedings may order any party to pay to any other party such costs and expenses...as the court thinks reasonable.

[5] The Court's discretion when making costs awards must be exercised judicially and in accordance with recognised principles. The usual approach is that costs follow the event and generally amount to 66 percent of costs actually and reasonably incurred by the successful party (absent any factors that might otherwise warrant an increase or decrease from that starting point).

[6] A detailed schedule of costs, said to have been incurred in relation to this proceeding, is annexed to the memorandum filed on behalf of the defendant. I am satisfied, on the basis of the information before the Court, that the defendant incurred actual costs of $8,387.50. This figure excludes the costs associated with the Authority's investigation.

[7] The hearing took one day. I accept Mr Singh's submission that the issues

raised on the challenge were not complex. However, I am satisfied (having regard to

the steps that were required to respond to the challenge) that actual costs of

$8,387.50 were within the range of reasonable costs in the circumstances.

[8] Mr Vinnicombe submits that there ought to be an uplift in costs. First, he submits that the plaintiff failed to take up the defendant's suggestion of a judicial settlement conference. I do not consider that it is appropriate to uplift costs on the basis of a party's refusal to agree to a judicial settlement conference. The process is voluntary, and it is entirely speculative to suggest (as the defendant does) that significant costs may well have been saved if such a conference had taken place.

[9] Secondly, it is submitted that the plaintiff pursued its challenge for the purpose of delaying payment of the awards made against it by the Authority and that a vindictive attitude was displayed towards the defendant. I am not prepared to draw the inferences sought as to the plaintiff's motivations for pursuing the challenge. Nor do I consider that it is appropriate to uplift costs based on the way in which the plaintiff's case was run before the Court. Ultimately the challenge was resolved on the basis of disputed facts, and the plaintiff was entitled to test the defendant's evidence by way of cross-examination.

[10] Thirdly, the defendant submits that costs were increased because of the plaintiff's request for an adjournment. I have already taken the costs associated with the request for an adjournment into account in assessing reasonable costs.

[11] The plaintiff submits that a costs contribution of $1,000 is appropriate, including having regard to the quantum of compensation ordered in favour of the defendant. I do not accept that this factor warrants a discount in the award that would otherwise be made.

[12] In all of the circumstances I am satisfied that an appropriate contribution to

the defendant's costs in this Court is $5,500.

[13] The defendant seeks a contribution to its costs in the Authority of $1,500. This is opposed by the plaintiff, on the grounds already referred to.

[14] The filing of a de novo challenge effectively puts the question of costs in issue before the Court.[4]

[15] The Authority's power to award costs is governed by cl 15, sch 2 of the Act.

The Authority usually applies a daily tariff approach.[5]

[16] I see no reason, based on the material before the Court, to depart from the usual approach. Accordingly the defendant is awarded a contribution towards its costs in the Authority of $1,500.

[17] The defendant is entitled to the disbursements sought, and to which no objection is taken. I decline to order interest on the orders for costs and disbursements, as sought by the defendant.[6]

**Conclusion**

[18] The plaintiff must pay the defendant the sum of $5,500 by way of a contribution to his costs in this Court, together with $1,500 by way of contribution to his costs in the Authority. The plaintiff must also pay the defendant $109.36, by way of disbursements.

Christina Inglis

Judge

Judgment signed at 10am on 5 September 2013

[1] [2013] NZEmpC 135.

[2] [2012] NZERA Auckland 246.

[3] See *Victoria University of Wellington v Alton-Lee* [2001] NZCA 313; [2001] ERNZ 305 (CA); *Binnie v Pacific Health Ltd* [2003] NZCA 69; [2002] 1 ERNZ 438 (CA) and *Health Waikato Ltd v Elmsly* [2004] NZCA 35; [2004] 1 ERNZ 172 (CA).

[4] *Paul v Capital and Coast District Health Board* [2005] NZEmpC 32; [2005] ERNZ 197 at [26].

[5] An approach endorsed by a full Court of the Employment Court in *PBO Ltd (formerly Rush Security) Ltd v Da Cruz* [2005] NZEmpC 144; [2005] ERNZ 808 at [46] subject to the need to avoid rigidity.

[6] *Taiapa v Te Runanga O Turanganui A Kiwa t/a Turanga Ararau Private Training Establishment* [2013] NZEmpC 128 at [8].

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