

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Hiren De Sai (Applicant/Respondent)  
**AND** The Simpl Group Limited (Respondent/Applicant)  
**REPRESENTATIVES** Graeme Ogilvie for Applicant/Respondent  
Anthony Drake for Respondent/Applicant  
**MEMBER OF AUTHORITY** G J Wood  
**SUBMISSIONS RECEIVED** 25 January 2005  
**DATE OF DETERMINATION** 26 January 2005

**COSTS DETERMINATION OF THE AUTHORITY**

1. This matter involved a claim for unjustifiable dismissal (WEA 27/04) and a counterclaim for damages as a result of alleged misrepresentation (WEA 115/04). The result of the substantive investigation was that the claim of the Simpl Group Limited (Simpl) against Mr De Sai for misrepresentation was dismissed and that Mr De Sai was to be paid one month's notice plus holiday pay by Simpl. In my substantive determination I noted that costs were reserved but that it would seem at first glance, at least, that they might properly lie where they fell. In the event, both parties made application for costs in their favour.
2. On behalf of Mr De Sai Mr Ogilvie claimed that Mr De Sai was fully successful in one claim and partially successful in the other. He submitted that the counterclaim required at least 50% of the work for the hearing and yet Mr Medary on behalf of Simpl "admitted he had no proof or evidence of any misrepresentation". In total, Mr De Sai claimed \$2,250 in costs plus the \$70 filing fee.
3. On behalf of Simpl, Mr Drake submitted that as Mr De Sai was unable to provide confirmation of his role at Microsoft, was thus unable to meet a fundamental condition

of his employment, had been subject to an appropriate and fair disciplinary process and that as Simpl was genuine in its belief that Mr De Sai misrepresented his experience, then Simpl should be successful in a claim for costs. In summary Mr Drake submitted that Mr De Sai caused Simpl to incur significant costs through his failure to act in an honest and transparent manner. It was also submitted that Mr De Sai's failure to provide proper disclosure of documents had the effect of frustrating Simpl's counterclaim.

4. Nothing submitted by the parties has changed my initial impression that costs should lie where they fall. Mr De Sai was successful in defending the counterclaim but was only partially successful in his claim for compensation from Simpl. The investigation was hampered by Mr De Sai's inability to provide vital information about his previous work experience, which was also the key cause of his problems with Simpl. On the other hand, Mr De Sai was entitled to be paid a month's pay in lieu of notice earlier, rather than being required to go through the Authority's processes.
5. This was very much the sort of case that should have been resolved in mediation.
6. For all the above reasons, therefore, I determine that costs lie where they fall in respect of both applications before the Authority.

**G J Wood**  
**Member of Employment Relations Authority**