

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 113/09
5085018

BETWEEN MUSTAFA KANAR
 Applicant

AND EROL GURLEYEN
 First Respondent

 SULTANS HAREM LIMITED
 Second Respondent

Member of Authority: P R Stapp

Representatives: Paul McBride and Guido Ballara for Applicant
 Shima Grice for First Respondent
 Alyn Higgins for Second Respondent

Telephone Conference: 4 August 2009

Correspondence received: 22, 23, 29, 31 July and 3 August 2009 from Applicant
 28, 31 July 2009 from First Respondent
 31 July 2009 from Second Respondent

Determination: 18 August 2009

COSTS DETERMINATION OF THE AUTHORITY

The proceedings, investigation meeting and costs claim

[1] This is to confirm that the 11 August 2009 for an investigation meeting was vacated upon a request from the First Respondent. The adjournment was not consented to or opposed by the applicant, but subject to costs being fixed against Mr Gurleyen, and subject to the least possible delay for another investigation meeting.

[2] The Second Respondent was ready to proceed but considered it essential that all parties be present.

[3] Mr Gurleyen's representative opposed costs being fixed because Mr Gurleyen's reasons for an adjournment were genuine reasons through no fault of his own. The applicant should not face any further costs because his representative is ready to proceed. The applicant is in receipt of legal aid. Any increase in costs is disingenuous, it was submitted.

[4] Mr McBride submitted in reply on behalf of the applicant that the application for adjournment had come from Mr Gurleyen for his own reasons. Mr Gurleyen should pay for the indulgence.

Issues

[5] Should any costs be awarded, and if so, how much?

Determination

[6] Much of the preparation has been completed including clarification on the arrangements for the investigation meeting. That meeting will now occur on 3 November and a final timetable is in place for further written statements from the witnesses for the Second Respondent and the other parties' right of reply. I understand that the applicant will appear by video conference, unless his circumstances enable him to appear personally.

[7] I am not going to depart from the usual practice of disposing of the costs in the substantive matter either at the end of the investigation meeting or by submissions in writing after the determination of the matter. I want to avoid any confusion and doubling up on costs relating to the investigation. However, I accept that Mr Gurleyen's request for an adjournment will have involved Mr McBride in extra work getting instructions and being present for the telephone conference to put his client's position and to make submissions.

[8] As such Mr Gurleyen's request for the adjournment is an extra event not reasonably expected by the applicant. Therefore he should be reimbursed a contribution for the costs of this event. Mr McBride suggested that the sum of \$750 should suffice to cover it. Without details, invoices and receipts it is difficult to

ascertain what the exact actual costs have been. Considering that costs are usually fixed on a tariff and that the starting range for a one day investigation meeting is about \$1,500 any costs should be less than that. This was a relatively short conference call involving correspondence beforehand. I assess that a third of the amount suggested by Mr McBride would be fair and reasonable in equity and good conscience. The applicant should not lose the benefit of any costs associated with the legal aid for his investigation meeting because of this matter eventuating, but of course, adjournments do happen for unforeseen circumstances, and this is one of those occasions.

[9] I assess that Mr Gurleyen pay Mr Kanar the sum of \$250 contribution to the costs for the work required in the adjournment application and the resetting of the investigation meeting.

Orders of the Authority

[10] I order Erol Gurleyen to pay Mustafa Kanar \$250 contribution to costs.

P R Stapp
Member of the Authority