

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 245  
3001812

BETWEEN                      A LABOUR INSPECTOR OF  
   THE MINISTRY OF  
   BUSINESS INNOVATION  
   AND EMPLOYMENT  
   Applicant

A N D                              RATTU & LALLI  
   DEVELOPMENTS LIMITED  
   Respondent

Member of Authority:      T G Tetitaha

Representatives:              M Denyer, Counsel for Applicant  
   S Ahmad, Respondent Representative

Date of Determination:      7 August 2018

---

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

---

**A. I order Rattu and Lalli Developments Limited to pay \$997.63 to the Ministry of Business Innovation and Employment as a contribution to its legal costs.**

**Employment relationship problem**

[1]     The Labour Inspector was successful in its application for a single penalty regarding one alleged breach of s22 of the Holidays Act 2003.<sup>1</sup> I ordered the respondent pay a penalty to the Crown of \$200. Costs were reserved. Parties were to file their costs submissions within 14 days.

[2]     Surprisingly the respondent sought costs. It was not represented by legal Counsel. However it did utilise the skills of its accountant, Mr Ahmed. On 14 February 2018 Mr Ahmed emailed the Authority advising:

The client has also advised me to apply for costs and needs the prescribed format and manner wherein we can apply as per mentioned in the determination

---

<sup>1</sup>     *Labour Inspector v Rattu & Lalli Developments Ltd* [2018] NZERA Auckland 44.

[3] The Authority Officer advised what was required including the provision of invoices. I directed the respondent file submissions as to why I should award costs by 1 August 2018. No submissions have been received.

[4] On 9 March 2018 the Labour Inspector also sought costs. This was outside the time allowed in the determination. Its submissions seek costs of \$160 per hour for in house counsel up to any \$2,250 and recovery of the \$71.56 filing fee.

### **Determination**

[5] Costs awards in the Authority usually “follow the event” meaning they are awarded to the successful party. The successful party here was the Labour Inspector. This matter took approximately half a day. The usual approach to costs is to apply the Authority’s daily notional tariff. In this case the tariff is \$4,500 per hearing day or proportion thereof. For a half day the starting point shall be \$2,250.

[6] An interim decision has been made on this file awarding costs to the respondent due to the adjournment of an earlier hearing.<sup>2</sup> The respondent’s costs in attending the earlier hearing have been resolved. I decline to award the respondent any further costs.

[7] However I am not inclined to grant \$2,250 to the Labour Inspector for its costs. This is because there is no breakdown of hours legal Counsel spent on the file and the amounts actually being paid for the in house solicitor’s time. Other than the submission “costs in this matter easily exceeded [\$2,250]” there is no evidence to support this award.

[8] Costs awards should not exceed parties’ actual costs. External Counsel and advocates would usually provide an itemised invoice of their time spent and charge out rates. This is to prove the amounts charged do not exceed the actual costs award sought. None of this type of supporting material such as actual costs of the solicitor has been supplied here.

[9] Even based upon the Labour Inspectors notional \$160 per hour, \$2,250 for the half day hearing is an excessive costs award. For a half day hearing with preparation

---

<sup>2</sup> *Labour Inspector v Rattu & Lalli Developments Ltd* [2017] NZERA Auckland 206.

time of one day, this would equate to 9 hours at \$160 per hour or \$1,440. This is because I assume the Labour Inspector himself primarily prepared the affidavit, not the solicitor. An experienced in house solicitor seeking to prosecute a single breach should not have spent excessive amounts of time on this file.

[10] This is also a case that does not require indemnity costs. If this case cost the Ministry \$1,440 to bring on for hearing plus a filing fee of \$71.56 then two thirds of that fee is appropriate to be reimbursed not the entirety. This equates \$997.63.

[11] I order Rattu and Lalli Developments Limited to pay \$997.63 to the Ministry of Business Innovation and Employment as a contribution to its legal costs.

**T G Tetitaha**  
**Member of the Employment Relations Authority**