

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 319
5432361

BETWEEN VISHAAL MADANI
 Applicant

A N D CIRROTEC LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Michael Smyth, Counsel for Applicant
 Michael O'Brien and Charlie Piho, Counsel for
 Respondent

Submissions Received: 25 June 2014 from the Applicant
 9 July 2014 from the Respondent

Date of Determination: 22 July 2014

COSTS DETERMINATION OF THE AUTHORITY

- A. Cirrotec Limited must pay \$3,680.94 to Mr Vishaal Madani as a reasonable contribution to his costs within 14 days of the date of this determination.**

The substantive determination

[1] In the substantive determination of the Authority issued on 17 June 2014¹ I determined that Cirrotec had genuine reasons for terminating Mr Madani's employment but had failed to follow a fair and proper process and had breached its obligations of good faith. I found Mr Madani to have been unjustifiably dismissed or disadvantaged by Cirrotec. I awarded Mr Madani compensation of \$8,500 under s.123(1)(c)(i) of the Employment Relations Act 2000 (the Act).

¹ [2014] NZERA Auckland 239

[2] I did not accept Mr Madani's other claims that he had been racially harassed in his employment or that he was entitled to a commission on the WEL Network contract.

[3] I did not accept Cirrotec's counterclaims against Mr Madani that he had breached his obligations of fidelity, confidentiality and good faith during his employment and that following termination of his employment he had breached the confidentiality and restraint of trade provisions contained in his employment agreement.

[4] The matter involved two days of Investigation Meeting and both Mr Madani and Cirrotec seek costs.

[5] Mr Madani seeks an uplift in the current notional daily tariff of \$3,500 normally applied by the Authority. Counsel for Mr Madani claims that much of the investigation meeting was concerned with the unsuccessful counterclaims brought by Cirrotec. Counsel for Mr Madani seeks in excess of \$7,000 which would be the equivalent of the notional daily tariff for a two day investigation meeting. Counsel for Mr Madani has attached tax invoices totalling \$16,629.38 plus GST for time and attendances in relation to this matter.

[6] Counsel for Cirrotec claims that, on balance, Mr Madani cannot be considered to have been the successful party because out of the four claims brought by him, he was successful with just one claim. That successful claim, it is argued, related to a flawed process by Cirrotec in implementing a genuine redundancy. Counsel for Cirrotec submits that Cirrotec successfully defended three out of four claims brought by Mr Madani and that Mr Madani was successful with one claim and in defending two counterclaims. Cirrotec argues that most of the two day Investigation Meeting was spent on Mr Madani's unsuccessful claims.

[7] Cirrotec claims that approximately 60% of the investigation meeting was devoted to Mr Madani's unsuccessful claims and 40% was spent on Mr Madani's successful claim and defending Cirrotec's unsuccessful counterclaims. Netting these two figures together, Cirrotec seeks an award of \$1,400 in costs. No evidence of Cirrotec's actual costs was provided to the Authority.

Determination

[8] The Authority's power to award costs arises from Schedule 2, clause 15 of the Act. This confers a wide discretion on the Authority to award costs, on a principled basis.

[9] Counsel for both parties have referred the Authority to the leading case of *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*² which sets out the principles the Authority ought to apply when exercising its discretion in respect of costs. Principles relevant in this case include; that the Authority's discretion to award costs is not to be exercised arbitrarily, is to be consistent with the Authority's equity and good conscience jurisdiction which is to be considered on a case by case basis, costs generally follow the event and awards are to be modest.

[10] Because the investigation in this case was in relation to distinct claims and counterclaims, just one of Mr Madani's claims being successful and neither of Cirrotec's counterclaims being successful, the case does not lend itself to simply applying one daily rate to the total number of days of the investigation meeting.

[11] Counsel for Mr Madani and Counsel for Cirrotec differ as to the proportion of total hearing time that was taken up by each of the claims and counterclaims. My assessment is that Mr Madani's successful claim took the least amount of time. Mr Madani's unsuccessful claims and Cirrotec's unsuccessful counterclaims consumed the balance of time in reasonably even proportions.

[12] Currently, the daily tariff for an investigation meeting in the Authority is \$3,500. I consider the daily rate without adjustment, and with a reduction in hearing time, is appropriate in the circumstances of this case. I propose reducing the hearing time by one day to take in to account the lack of success of both parties with their claims and counterclaims. This takes into account reasonable rather than actual hearing time required for the case.

[13] I award Mr Madani costs of \$3,500 together with expenses incurred by him totalling \$180.94, being the filing fee, photocopying and courier costs. The total

² [2005] 1 ERNZ 808

amount of \$3,680.94 is to be paid by Cirrotec to Mr Madani within 14 days of the date of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority