

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2016] NZERA Wellington 117  
5528260

BETWEEN           ASHISH MAHARAJ  
Applicant

AND                   WESLEY WELLINGTON  
MISSION INCORPORATED  
Respondent

Member of Authority:    M B Loftus

Representatives:        Gregory Bennett, Advocate for Applicant  
Matthew Dearing, Counsel for Respondent

Investigation Meeting:   On the papers

Submissions Received:   16 May 2016 from Respondent  
Nil from Applicant

Determination:           28 September 2016

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**COSTS DETERMINATION OF  
THE EMPLOYMENT RELATIONS AUTHORITY**

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[1]    On 14 April 2016 I issued a determination<sup>1</sup> dismissing Mr Maharaj's wage claim on the grounds it was precluded by virtue of a s 149 settlement and if that were not the case its pursuit was precluded by the Acts' limitation provision.<sup>2</sup>

[2]    Costs were reserved and as the successful party Wesley Wellington Mission Incorporated (Wesley) now seeks a contribution toward those it incurred.

[3]    Normally the Authority will use a daily tariff approach when addressing a costs claim.<sup>3</sup> The normal starting point is \$3,500 per day though adjustment may occur if the circumstances so justify.

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<sup>1</sup> [2015] NZERA Christchurch 164

<sup>2</sup> Section 142 of the Employment Relations Act 2000

<sup>3</sup> refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808

[4] The investigation took half a day which would, applying the above tariff, see a contribution in the order of \$1,750. In this instance that is what Wesley seeks. In doing so it relies on the tariff approach and supports the claim with evidence its costs exceeded the amount sought.

[5] Mr Maharaj's representative, Mr Bennett, was advised of the claim and asked to respond by 30 May 2016. On 1 June Mr Bennett's secretary wrote advising she had just become aware of the application, that Mr Bennett was unwell and seeking an extension to 17 June for the reply. The request was granted.

[6] Notwithstanding that and further reminders a response is yet to be received and nor is there any further explanation for its continued absence. There comes a point where a claim must be addressed and unexplained procrastination no longer tolerated. That point has been reached.

[7] Wesley's approach complies with that normally adopted by the Authority and must be considered reasonable given the costs actually incurred. Therefore, and in the absence of a contrary argument, I see no reason why it should not be granted.

### **Conclusion**

[8] For the above reasons Mr Maharaj is ordered to pay Wesley Wellington Mission Incorporated the sum of \$1,750.00 (one thousand, seven hundred and fifty dollars) as a contribution toward the costs Wesley incurred in defending Mr Maharaj's claim.

**M B Loftus**  
**Member of the Employment Relations Authority**