

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 356  
3028822

BETWEEN                      GARY MARTINSEN  
   Applicant  
  
AND                                TARGET INTERNATIONAL  
   (NZ) LIMITED  
   Respondent

3030932

BETWEEN                      TARGET INTERNATIONAL  
   (NZ) LIMITED  
   Applicant  
  
AND                                GARY MARTINSEN  
   Respondent

Member of Authority:      Vicki Campbell  
  
Representatives:            Deep Purusram for Mr Martinsen  
   Blair Edwards for Target International (NZ) Limited  
  
Submissions received:      7 May 2019 from Mr Martinsen  
   21 December 2018 from Target International (NZ)  
   Limited  
  
Determination:              14 June 2019

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A.      Mr Martinsen is ordered to pay to Target International (NZ) Limited the sum of \$5,000 as a contribution toward costs within 28 days of the date of this determination.**

**B. Target International (NZ) Limited is ordered to pay to Mr Martinsen the sum of \$2,250 as a contribution toward costs within 28 days of the date of this determination.**

[1] In a determination dated 10 December I found Mr Martinsen was justifiably dismissed and that neither Mr Martinsen nor Target International (NZ) Ltd had breached their statutory duty of good faith. I declined an application from Target for damages against Mr Martinsen.<sup>1</sup>

[2] I reserved costs and invited the parties to resolve the issue between them. The parties have been unable to resolve the matter and I have received submissions. Mr Martinsen has invited the Authority to stay the issue of costs until the outcome of a challenge of the determination is heard and determined by the Employment Court.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.<sup>2</sup> The principles applying to costs are well settled and do not require repeating.<sup>3</sup>

[4] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.<sup>4</sup> The investigation meeting took about nine hours, although it was conducted on one day to avoid the costs of a two day investigation meeting. During that time I investigated both claims.

[5] There was success by both parties. Although Target was successful in defending Mr Martinsen's claims against it, Mr Martinsen was likewise successful in defending the counter claims against him. Both parties are therefore entitled to a consideration of costs.

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<sup>1</sup> *Martinsen v Target International (NZ) Ltd AND Target International (NZ) Ltd v Martinsen* [2018] NZERA Auckland 395.

<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>3</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

<sup>4</sup> Practice Note 2, Costs in the Employment Relations Authority.

### **Should costs be stayed?**

[6] The usual practice of the Authority where there is a challenge is to determine costs. The Employment Court will then have before it all matters for determination. I consider a determination as to costs is appropriate in this case and there will be no stay ordered on the basis that there is a challenge to the determination.

[7] Both parties were successful at the Authority. Both parties incurred costs and they are entitled to some finality to the Authority's investigation and determination.

### **Costs against Mr Martinsen - 3028822**

[8] Mr Martinsen was the unsuccessful party in his application to the Authority. He is required to contribute to Target's costs. The investigation meeting spent approximately 2/3rds of the day investigating Mr Martinsen's claims. This equates to about six hours which is the usual length for an investigation meeting held on one day.

[9] The Authority will take into account any offers made by the parties to settle matters.<sup>5</sup>

The public interest in the fair and expeditious resolution of disputes would be undermined if a party were able to ignore a Calderbank offer without any consequences as to costs.

[10] The parties exchanged calderbank offers between December 2017 and August 2018. The last offer was made by Mr Martinsen on 27 August 2018, after the substantive issues were timetabled for an investigation meeting but before Mr Martinsen was due to lodge and serve his witness statements.

[11] The offer was obviously rejected by Target because the matter proceeded to an investigation meeting. I do not have any information as to the reasons why the offer was rejected. This means I am unable to assess whether the calderbank offer was rejected on a reasonable basis. Given Target's success in defending Mr Martineson claims I have allowed an uplift in the daily tariff.

[12] I am satisfied an award of costs of \$5,000 is appropriate.

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<sup>5</sup> As cited in *Bluestar Print Group NZ Ltd v Mitchell* [2010] NZCA 385 at [18].

[13] Mr Martinsen is ordered to pay to Target International (NZ) Limited the sum of \$5,000 as a contribution toward costs within 28 days of the date of this determination.

**Costs against Target - 3030932**

[14] Mr Martinsen was successful in defending Target's claims for damages against him. At the investigation meeting 1/3<sup>rd</sup> of the time was spent investigating the counter-claims against Mr Martinsen. That equates to about three hours which is equivalent to half a day of a normal day.

[15] I am satisfied an award of costs of \$2,250 is appropriate.

[16] Target International (NZ) Limited is ordered to pay to Mr Martinsen the sum of \$2,250 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority