

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 252
3075292

BETWEEN SITARAM MUKKAMALA
Applicant

AND SAVJOT SINGH
Respondent

Member of Authority: Jenni-Maree Trotman

Representatives: Simon Greening, counsel for the Applicant
Luke Meys, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and further Information Received: 27 May, 8 June and 22 June 2020 from the Applicant
27 May 2020 from the Respondent

Date of Determination: 25 June 2020

COSTS DETERMINATION OF THE AUTHORITY

[1] On 13 May 2020 the Authority issued a determination declining Sitaram Mukkamala's application to re-open the Authority's investigation. Costs were reserved with the parties being encouraged to resolve that issue themselves.

[2] The issue of costs was not resolved between the parties. In a memorandum filed on behalf Savjot Singh, he applied for costs of \$4,500 based on the Authority's normal daily tariff. His application was opposed by Mr Mukkamala who, in submissions filed by himself as opposed to his Representative, requested the Authority to make no award of costs.

Authority's Approach to Costs

[3] The Authority may order any party to a matter to pay to any other party such costs and expenses as the Authority considers reasonable.¹

[4] In *PBO Ltd v Da Cruz*, a full Court set out the principles that are appropriate for the Authority to apply when considering an application for costs.² These principles were confirmed as remaining appropriate in *Fagotti v Acme & Co Limited*.³ The principles include:

- a) There is discretion as to whether costs would be awarded and in what amount.
- b) The discretion is to be exercised in accordance with principle and not arbitrarily.
- c) The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.
- d) Equity and good conscience is to be considered on a case by case basis.
- e) Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award.
- f) It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- g) Costs generally follow the event.
- h) Without prejudice offers can be taken into account.
- i) Awards will be modest.
- j) Frequently costs are judged against notional daily rates.
- k) The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

¹ Employment Relations Act 2000, Schedule 2 clause 15.

² *PBO Ltd (Formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 (EmpC) at [44].

³ *Fagotti v Acme & Co Ltd* [2015] ERNZ 919 at [114].

[5] An assessment of costs will normally start with the notional daily tariff. The Authority's normal daily tariff is \$4,500.00 for the first day of an investigation meeting.⁴ The tariff is then adjusted upwards or downwards depending on the particular circumstances of the case.

Analysis

[6] Mr Mukkamala submits that the Authority should take into account his financial circumstances when imposing any costs award. He pointed out that he is not working and is on a benefit. His partner is also not working. He explained that he has significant debt although he did not particularise what this entailed.

[7] The financial situation of a losing party is relevant to the level of any costs award but is not decisive. In the exercise of my discretion I must also take into account other factors such as the interests of both parties and broader public policy considerations.⁵

[8] This matter was determined on the papers. It was relatively straight-forward but still required Mr Singh to file a statement of problem and supporting affidavits. As Mr Mukkamala had engaged a lawyer to represent him for his application for re-opening, it was not unreasonable for Mr Singh to follow suit. The costs Mr Singh incurred in obtaining legal representation cannot all rest on Mr Mukkamala, however, it is appropriate that Mr Singh be recompensed for some of the legal costs that he incurred.

[9] Taking into account all of the circumstances, including Mr Mukkamala's financial circumstances, I consider an appropriate contribution towards Mr Singh's costs is \$2,000. This represents less than one half of the applicable daily tariff and around one third of Mr Singh's actual legal costs.

[10] Mr Mukkamala is ordered to pay Mr Singh the sum of \$2,000 towards his legal costs within 14 days of the date of this determination.

Jenni-Maree Trotman
Member of the Employment Relations Authority

⁴ Practice Note 2, Costs in the Employment Relations Authority.

⁵ *Tomo v Checkmate Precision Cutting Tools Ltd* [2015] NZEmpC 2.