

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 549  
3137193

BETWEEN

ANTHONY PORIMA  
Applicant

AND

LOGGERTECH NZ LIMITED  
Respondent

Member of Authority: Michael Loftus

Representatives: Ira White, advocate for the Applicant  
Libby Brown, counsel for the Respondent

Submissions Received: 10 October 2022 from the Applicant  
26 October 2022 from the Respondent

Date of Determination: 27 October 2022

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 28 September 2022 I issued a determination addressing a multiplicity of claims Mr Porima had brought against his former employer, Loggertech NZ Limited (Loggertech).<sup>1</sup>

[2] Mr Porima was unsuccessful with his primary claim, namely that he had been constructively dismissed. He also failed with some seven claims of either disadvantage or failure to pay allowances (with the later claims totalling over \$20,000). That said, Mr Porima was successful with four claims concerning unauthorised deductions from his pay with the amount payable being \$3,513.92.

[3] Costs were reserved and as the parties have been unable to resolve this issue they have returned to the Authority for a determination.

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<sup>1</sup> *Porima v Loggertech NZ Limited* [2022] NZERA 489

[4] The application for costs came from Mr Porima who seeks \$3,000 plus the filing fee. Mr Porima says it is proper he receive a contribution toward costs as it was appropriate he test his claims and, in any event, the success of the unauthorised deduction claims is sufficient to justify a costs claim. The amount is calculated on the basis it was a one day investigation but he then accepts the tariff should be reduced to recognise the fact he was unsuccessful with a number of the claims.

[5] By way of reply Loggertech notes Mr Porima was “entirely unsuccessful” with his core claims which occupied the bulk of time required for both the investigation and preparation. Loggertech then goes on to recognise the success of the deduction claims before saying:

... on a time basis alone, the Respondent had more success that the Applicant to warrant an award of costs in favour of the Respondent. However, pragmatically, it is submitted that in this matter costs should lie where they fall and allow the parties to move on.

[6] The Authority’s jurisdiction to order a contribution toward a party’s costs is exercised by applying well-established principles.<sup>2</sup> Those principles recognise that:

- (a) a successful party should receive a contribution toward reasonably incurred costs and expenses;
- (b) costs should generally be modest and may not be used to punish the substantive conduct of the unsuccessful party;
- (c) the nature of a case may allow for an order that costs lie where they fall; and
- (d) the Authority may use a notional daily tariff as its starting point. It is currently \$4,500 for the first day. From there adjustment may occur either up or down depending on the circumstances of the case. Such adjustment may be to take account of settlement offers, particularly “calderbanks,” the financial means of the liable party and whether or not a party unnecessarily increased the costs incurred by the other.

[7] However, issues arise in situations such as this where there has been mixed success and there is a question as to who can be considered the successful party. In *Coomer v JA McCallum and Son Limited* the Employment Court observed:

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15, *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135 and [www.era.govt.nz/assets/Uploads/practice-note-2.pdf](http://www.era.govt.nz/assets/Uploads/practice-note-2.pdf)

Determining which party has been successful can be problematic. Where both parties have had a measure of success determining which of them is entitled to costs is often a nuanced assessment of competing considerations.<sup>3</sup>

[8] The Court then considered various precedents and outlined the issues to be considered before suggesting it appropriate one stand back and look at things “in the round”.<sup>4</sup>

[9] Having done so I would have to conclude that, by and large, it was Loggertech which was successful having defended the prime claim, along with four disadvantage allegations and arrears claims the value of which was nearly six times the unauthorised deductions it was ordered to remedy.

[10] It would ordinarily follow Loggertech should be the beneficiary of a costs claim as it suggested, but for two reasons that will not happen. The first is there is no claim and here I commend the practicality shown. The second is that while the material outcome was overshadowed by the value of the unsuccessful claims I must recognise Mr Porima’s success was with respect to what must be considered an important claim – namely reimbursement of wages improperly deducted.

### **Conclusion and Orders**

[11] For the above reasons I conclude costs should lie where they fall and there will be no order in that regard.

**Michael Loftus**  
**Member of the Employment Relations Authority**

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<sup>3</sup> *Coomer v JA McCullum and Son Ltd* [2017] NZEmpC 156 at [37]

<sup>4</sup> Above n 3 at [43]