

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 39
5279548

BETWEEN DEO RAJ
Applicant

AND QUEEN STREET MEDICAL
CENTRE LIMITED
Respondent

Member of Authority: K J Anderson

Representatives: Deo Raj, (Applicant) in person
Kiran Dutt, Advocate for Respondent

Submissions Received: 5 November 2012 for Respondent
19 November 2012 for Applicant

Determination: 4 February 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination issued on 12th October 2012,¹ the Authority determined that the claims for arrears of wages and holiday pay pursued by Mr Raj were unsuccessful. The counterclaim advanced by Queen Street Medical Centre Limited (QSMC) was upheld by the Authority. The parties have now provided their respective submissions pertaining to costs.

[2] The substantive matter was determined on the papers, therefore the parties were not required to attend an investigation meeting. However, Mr Dutt, for QSMC, submits that costs of \$7,797 were incurred and this amount is being claimed. Also, the Authority is asked to consider an award of costs in recognition of the personal time that Dr Singh, the owner of medical centre, was required to devote to addressing the claims of Mr Raj; but apart from the salient fact that there are no details of Dr Singh's involvement, it is not appropriate to allow for Dr Singh's time given the overall circumstances.

¹ [2012] NZERA Auckland 360

[3] In regard to the sum of \$7,797 claimed, QSMC has provided comprehensive details of how this amount was expended. I note that \$2,648.33 was incurred prior to and including mediation. It is the general practice of the Authority not to consider such costs. Therefore, that leaves a sum of \$5,149, including the sum of \$520 incurred when Mr Raj amended (increased) his claim following mediation, and after his initial involvement with the Authority. Mr Raj amended his claims to encompass the total period of his employment, with the affect being that his claims increased from \$13,750 to \$31,181. This in turn required QSMC to conduct an analysis of all payments received by Mr Raj in order to verify if there was any merit to his claims. In the event, QSMC concluded there was not and in fact, it was revealed that Mr Raj had received a payment that he was not entitled to; hence the counterclaim that was pursued; successfully.

[4] In response to the costs submissions presented by QSMC, Mr Raj has presented a rather cryptic submission to the Authority. In essence, Mr Raj says that the costs claimed by QSMC are: “unreasonably high and unjustified” and that the Authority should not award any costs. Mr Raj also says that he is not in a position to pay any costs.

[5] It is a now matter of firstly determining: Are the costs that have been incurred by QSMC reasonable in the circumstances?

[6] I conclude that the costs incurred (\$5,149) are reasonable in the circumstances. This is because Mr Raj put the respondent in a position whereby there was no option but to instruct its accountants (Melroy Dutt & Thomson) to conduct a full analysis of all payments made to Mr Raj during his employment; a time consuming exercise in itself. The remainder of the expenses incurred related to the time expended by Mr Dutt in preparing a defence to the claims of Mr Raj. And while this was presented in the form of evidence and submissions “on the papers,” the work of Mr Dutt was thorough and professional and the fees charged appear quite reasonable.

[7] Given that the respondent was entirely successful in defending the claims of Mr Raj, and its counterclaim, the next question is: What is a reasonable award of costs in the circumstances?

[8] While the substantive matter was determined on the papers, I make the assessment that had an investigation meeting taken place, it would have taken approximately half of a day. The current starting point in determining an appropriate award of costs is the application of a base rate (or tariff) of \$3,500 for one day of hearing time. Therefore, taking into account that half of a day would have been required for an investigation meeting, the starting point is an award of costs of \$1,750. That figure can be increased or reduced by taking into account specific factors that apply to the particular circumstances.

[9] In this case, the claims of Mr Raj were proven to be entirely without merit. In regard to the general background, I note that as an outcome of mediation, Mr Raj appears to have acknowledged that the matter was resolved and that he was not owed any monies. Mr Raj then recanted and continued to pursue his claims in the Authority whilst informing that he would be providing “new evidence” and would be using the services of “a professional accountant”. But no new evidence was produced nor was an accountant involved. Then following a conference call with the parties, whereby a timetable was established for evidence and submissions to be provided to enable the matter to be determined on the papers, Mr Raj advanced an amended claim, as referred to earlier in this determination. This required the respondent to incur further expense, as already mentioned.

[10] I conclude that the lack of merit in regard to the claims of Mr Raj and the manner in which he chose to pursue them, means that the respondent is entitled to an increase in the amount of costs that would have otherwise been awarded; bringing it \$2,500.

[11] Finally, Mr Raj says that he is not in a position to pay any costs but he has not provided any evidence at all to support this assertion. Mr Raj must be taken to have been aware that by engaging in proceedings, that were at best, very risky in regard to the merits of his claims, he was exposing himself to a probable award of costs against him if he was unsuccessful. Mr Raj put the respondent to unwarranted expense that he is now required to make a reasonable contribution to.

Determination

[12] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, Mr Deo Raj is ordered to pay to Queen Street Medical Centre Limited the sum of \$2,500.00 within 30 days of the date of this determination.

K J Anderson
Member of the Employment Relations Authority