

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 293
3122712

BETWEEN AMAN SAGOO
Applicant

AND BLUE ORIGIN HOTELS
LIMITED
Respondent

Member of Authority: Michael Loftus

Representatives: Stephen Parry, counsel for the Applicant
Karan Singh for the Respondent

Submissions Received: 14 June 2022 from the Applicant
29 June 2022 from the Respondent

Date of Determination: 4 July 2022

COSTS DETERMINATION OF THE AUTHORITY

[1] On 31 May 2022 I issued a determination in which I concluded Mr Sagoo had a personal grievance as he had been unjustifiably dismissed.¹ I also concluded he was due unpaid wages.

[2] Costs were reserved and as the successful party Mr Sagoo now seeks a contribution toward costs.

[3] Normally the Authority will apply a daily tariff when addressing costs with the current starting point, before adjustment which may occur depending on the circumstances, being \$4,500 for the first day.² That is what Mr Sagoo seeks.

¹ *Sagoo v Blue Origin Hotels Ltd* [2022] NZERA 224

² *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 and *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135

[4] The investigation only saw the parties in attendance for a half day though Mr Singh, on behalf of Blue Origin, later sent further material. That then had to be considered and responded to by Mr Sagoo's representative. In the circumstances I consider two thirds of a day appropriate. Applying the tariff would therefore see an award in the order of \$3,000 and in the absence of any argument regarding amount from Mr Sagoo I consider that appropriate should costs be awarded.

[5] In support of the application Mr Parry, on behalf of Mr Sagoo, records he was represented by Community Law Wellington and Hutt Valley ("CLWHV") which is a charitable trust providing free legal advice and representation. CLWHV is predominantly funded by the Ministry of Justice with funding primarily determined by the number of clients CLWHV assists and not for the provision of representation such as that it provided to Mr Sagoo.

[6] Mr Parry accepts CLWHV did not charge Mr Sagoo but notes it, itself, incurred costs when representing Mr Sagoo. This was by first employing counsel and then instructing counsel after a staffing change. It is submitted *Innovative Landscapes (2015) Limited v Popkin*³ provides more than adequate authority that costs can be awarded in such circumstances. CLWHV then asks any sum awarded be passed to it.

[7] Blue Origin's response is that there should be no award of costs given CLWHV is a voluntary organisation funded from elsewhere and Mr Sagoo incurred no costs. Blue Origin also argues that as Mr Sagoo was professionally represented and it was not, there was a power imbalance that disadvantaged it which and which would be exacerbated by an additional costs imposition.

[8] Blue Origin's last argument fails to convince. It is well established costs will normally follow the event and with respect to the issue of representation the Authority's notes show Blue Origin was, at one stage, represented. The decision to discharge that representation was Blue Origin's and should not be visited upon Mr Sagoo.

[9] The other argument regarding CLWHV's status and the fact Mr Sagoo paid no costs also fails as CLWHV is correct when it says costs can, indeed probably should, be awarded in such circumstances. *Popkin* traverses the relevant issues in some depth before concluding it was appropriate costs be awarded in what was an almost identical situation. In doing so I note

³ *Innovative Landscapes (2015) Limited v Popkin* [2020] NZEmpC 96

further evidence supporting the conclusion Blue Origin's argument about an imbalance of power has little merit. It is the fact *Innovative Landscapes* was self represented yet imbalance of power one of the justifications for awarding costs in favour of the successful employee with the Court saying:

In my view the work of Community Law Centres and lawyers acting on a pro bono basis in this jurisdiction is indispensable for ensuring that the underlying purposes of the statute are met, including that those in the most vulnerable position have access to the Employment Court for ventilation of their employment disputes. That work should not be thwarted by adopting an unnecessarily restrictive approach to costs awards. More fundamentally, such an approach would risk undermining, not supporting, the underlying objectives of the Act. I conclude that the Court may order costs in circumstances where a party has been represented on a pro bono basis, consistently with its broad discretion informed by the underlying purposes and objectives of the statutory scheme.⁴

[10] Paragraph 24 of *Popkin* provides precedent and justification for ordering that the amount awarded to Mr Sagoo then be passed to by CLWHV.

Conclusion and Orders

[11] Accordingly I order the respondent, Blue Origin Hotels Limited, pay Aman Sagoo the sum of \$3,000.00 (three thousand dollars) as a contribution toward the costs incurred pursuing his claims. Payment is to be made within 28 days of this determination.

[12] I also direct that the costs ordered against Blue Origin Hotels Limited be paid by Mr Sagoo to Community Law Wellington and Hutt Valley.

Michael Loftus
Member of the Employment Relations Authority

⁴ Above n 3 at [21]