

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2018] NZERA Auckland 228
3015400**

BETWEEN

CHARANJIT SAHOTA
Applicant

AND

INDEPENDENT STEVEDORING
LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Simon Mitchell, Counsel for Applicant
Shima Grice, Counsel for Respondent

Costs Submissions 12 July 2018 from Applicant
18 July 2018 from Respondent

Determination: 20 July 2018

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 13 June 2018 ([2018] NZERA Auckland 187), I found that the Applicant, Mr Charanjit Sahota, had been unjustifiably dismissed from his employment by the Respondent, Independent Stevedoring Limited (ISL).

[2] Costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and both parties have filed submissions in respect of costs.

[3] The matter involved a 1 day meeting.

[4] Mr Mitchell, citing actual costs (post-mediation) of \$13,965.00 is seeking a contribution to costs at the Authority's usual tariff rate of \$4,500.00 for a 1 day meeting.

[5] Ms Grice, on behalf of ISL, submits that an award of \$2,250.00, being a 50% reduction on the normal daily tariff amount, is appropriate.

Submissions for the Respondent

[6] Ms Grice submits that although the Authority determined that Mr Sahota had been unjustifiably dismissed by ISL, the Authority found ISL had substantive justification for reaching its decision to dismiss him.

[7] It is further submitted that the application for reinstatement failed.

[8] Ms Grice also submits that ISL made a Calderbank Offers to Mr Sahota to resolve the matter prior to the substantive matter being heard.¹ A Calderbank Offer is an offer ‘without prejudice save as to costs’ offer.

[9] The Calderbank Offer was made in a letter headed “Without prejudice save as to costs’ dated 1March 2018. This provided that, on the basis that Mr Sahota accept its offer and discontinue his claim in the Authority, ISL would pay him the sum of \$5,000.00 on 9 March 2018.

[10] Mr Sahota rejected the Calderbank Offer on the basis that it did not offer him reinstatement.

Submissions for the Applicant

[11] Mr Mitchell submits that the determination of the Authority found that Mr Sahota had a personal grievance as a result of his dismissal. Although the Authority did not make an order for reinstatement, Mr Sahota was awarded lost wages and compensation for humiliation, upset and injury to feelings.

[12] In regard to the reinstatement application: the evidence in relation to the reinstatement application was not significant nor of great length, and it did not delay the hearing. It did not result in ISL facing significant costs.

[13] The investigation only occupied one day, and it is submitted that the normal daily tariff for a one day hearing of \$4,500.00 should apply.

Principles

[14] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

¹ *Calderbank v Calderbank* [1976] Fam 93 (CA)

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[15] Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*².

[16] The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)*³.

Determination

[17] It is a principle set out in *Da Cruz*⁴ that costs are not to be used as a punishment. Although Mr Sahota was successful in his claim that he had been unjustifiably dismissed by ISL, I had determined that his contribution to the situation which had resulted in his unjustifiable dismissal had been significant, and the amount awarded to him in remedies was as a consequence reduced by 50%.

[18] Accordingly I find that to take ISL's substantive justification in regards to the unjustifiable dismissal into account at the costs stage would be to punish him.

[19] In respect of the application for reinstatement, Mr Sahota was not successful in this claim and again I find that to take that into consideration at the costs determination would be to punish him. I also accept Mr Mitchell's submission that the evidence in relation to the reinstatement claim did not delay the investigation meeting significantly.

[20] In regard to the Calderbank Offer, the amount offered in it was less than that awarded to Mr Sahota in the Authority's determination, and accordingly I do not give it much weight.

[21] Nonetheless I accept that costs normally follow the event and that therefore ISL's success in the matter should be taken into consideration at this stage.

² [1996] 2 ERNZ 622

³ [2005] 1 ERNZ 808

⁴ [2005] 1 ERNZ 808

[22] Taking all these considerations into account, I order ISL to pay Mr Sahota a contribution to costs in the sum of \$3,800.00, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority