

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 81
3163921

BETWEEN	SEEMA SHANDIL Applicant
AND	MASSAM TRANSPORT LIMITED Respondent

Member of Authority:	Alastair Dumbleton
Representatives:	John Wood, advocate for the Applicant Joan Watson, advocate for the Respondent
Costs submissions received:	13 February 2023
Determination:	22 February 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] Following the issue to the parties of the Authority's determination dated 10 November 2022, an application for costs was made on behalf of the respondent Massam Transport Ltd.

[2] In its determination the Authority held that the respondent was entitled to a contribution to its costs of representation for a two-day investigation meeting, in circumstances where Seema Shandil, the applicant, had been found to have no personal grievance or other sustainable claim against the respondent.

[3] The Authority expressly required any application for costs to be made within 14 days of the date of the determination: that is, on or before 24 November 2022.

[4] The respondent's costs application was not received until 13 February 2023, and Ms Shandil has objected to it because it is outside the time allowed.

[5] The explanation given for its lateness is that the Authority had not made it clear in its determination that the respondent needed to apply to the Authority for a determination of costs.

[6] While that may not have been crystal clear, the determination was reasonably clear as to the Authority's requirements; if the parties were unable to agree and resolve the issue of costs by consent, a determination would need to be applied for, and the *application*, and any reply, would need to be lodged within the time limits specified.

[7] Generally speaking, some entitlements may be received automatically while others must be applied for. Costs in this case were expressed to be in the latter category.

[8] Mr Wood the applicant's representative considered the directions could not have been clearer. Ms Watson the respondent's representative is not a totally lay person but an experienced employment relations practitioner, who might be expected to have contacted the Authority for clarification if there was any doubt about the Authority's directions as to costs.

[9] The Authority must uphold the objection of the applicant. The costs application is not late by just a few days but several weeks. Also, the applicant took advice on whether to challenge the determination but decided not to when no application for costs was made against her. She factored that into her decision to walk away from taking further proceedings and risking increased expense.

[10] She changed her position as a result and is now out of time to commence a challenge.

[11] In the circumstances, the Authority declines to award costs.

Alastair Dumbleton
Member of the Employment Relations Authority