

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2021] NZERA 310  
3100433

BETWEEN	GURJIT SINGH Applicant
AND	JARNAIL SINGH DHALIWAL First Respondent
AND	VEER ENTERPRISE LIMITED Second Respondent

Member of Authority: Robin Arthur

Representatives: John Wood, advocate for the Applicant  
Jarnail Singh Dhaliwal for the Respondents

Submissions: On 24 June 2021 from the Applicant and on 29 June  
from the Respondents

Determination: 20 July 2021

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A. Veer Enterprise Ltd (VEL) and Jarnail Singh Dhaliwal are jointly and severally liable to pay Gurjit Singh costs of \$5,500. They may pay those costs to him within 28 days of the date of this determination.**

[1] In a determination issued on 10 June 2021 the Authority found Veer Enterprises Ltd (VEL) unjustifiably dismissed Gurjit Singh and had unlawfully deducted money from his wages. VEL was ordered to pay remedies for Mr Singh's personal grievance, wage arrears and a penalty for breach of the Wages Protection Act 1983. Mr Dhaliwal was also found to be a person involved in breaches of employment standards. Leave

was granted to recover wage arrears from him personally if VEL did not pay the ordered amounts.<sup>1</sup>

[2] The determination reserved costs and set a timetable for memoranda to be lodged if the parties could not resolve that issue themselves. They were not able to do.

[3] Mr Singh's advocate then lodged a memorandum seeking an order requiring VEL and Jarnail Singh Dhaliwal to pay costs totalling \$6,750 for the one day investigation meeting. This amount comprised the Authority's usual daily tariff of \$4,500 and two 'uplifts' of \$1,125 each. The first uplift sought was because the Authority investigation meeting, originally scheduled to run over two days was able to be completed in one day because, by agreement with the parties, it continued until 7pm. The second uplift sought was because two witnesses for whom VEL had lodged witness statements did not attend the investigation meeting to affirm those statements and answer questions about them. The statements were set aside and no account was taken of them. Mr Singh's advocate submitted this failure to attend caused unnecessary expense as he had spent time preparing questions to ask of them.

[4] Mr Dhaliwal, who is the director and sole shareholder of VEL, provided only a brief email response to Mr Singh's cost memorandum. It read:

Sorry I don't have money to pay them. In the ERA decision there is nothing mentioned. I have pay his Lawyer's fee, I didn't hire him so I am not liable to pay him. Thanks.

[5] It is not correct that the Authority's determination did not mention costs. The determination did expressly reserve costs and set a timetable for memorandum if the parties could not resolve that issue. It also included the following indication of what might happen if the Authority had to set costs:

The parties could expect the Authority to determine costs, if asked to do so, on its usual daily rate of \$4,500 unless particular circumstances or factors required an upward or downward adjustment of that tariff.

[6] Financial capacity to pay may be a factor in setting a costs award but requires evidence that establishes such an adjustment is necessary. The immediate means of the party who may be required to pay costs is not the sole consideration in setting a costs award. An amount ordered as costs may be able to be met from future business or

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<sup>1</sup> *Singh v Singh & Veer Enterprise Limited* [2021] NZERA 247.

employment earnings or from funds borrowed from a financial institution, family or friends. In this case VEL and Mr Dhaliwal had not provided any verified financial information about their means to pay a costs award and no adjustment of the award was warranted on that ground.

### **The costs assessment**

[7] As he succeeded in pursuing his claim Mr Singh was entitled to an order requiring VEL and Mr Dhaliwal, as the unsuccessful parties, to contribute to his costs of representation. The Authority's usual daily tariff of \$4,500 was the appropriate starting point, subject to any adjustment needed to take account of the long-standing basic tenets for awarding costs.<sup>2</sup>

[8] Completing the investigation meeting in one day, not two, spared both parties some time and expense but the longer one day meeting, which ran to around 7pm, did warrant an uplift of \$1,000 for costs in this case. The non-appearance of two witnesses, who were VEL managers, also saved time. The claim for the resulting wasted preparation of questions for them by Mr Singh's advocate is declined as costs for that time is included in the daily tariff. No other factors required any further upward or downward adjustment of costs.

[9] Accordingly the amount VEL and Mr Dhaliwal must contribute towards Mr Singh's costs of representation is \$5,500. VEL and Mr Dhaliwal are jointly and severally liable to pay those costs. How payment is apportioned between the company and Mr Dhaliwal is a matter for them, provided the total amount is paid. The costs awarded must be paid within 28 days of the date of this determination.

Robin Arthur  
Member of the Employment Relations Authority

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<sup>2</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].