

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 117  
5431580

BETWEEN                      SURENDER SINGH  
   Applicant  
  
A N D                              DEEPAK KHURANA  
   First Respondent  
  
A N D                              JAGAT MOHAN SINGH  
   RAWAT  
   Second Respondent

Member of Authority:      Anna Fitzgibbon

Representatives:              Simon Laurent, Counsel for the Applicant  
   Penny Swarbrick, Counsel for the First Respondent  
   Andrew Gallie, Counsel for the Second Respondent

Submissions Received:      23 March 2016 from the Applicant  
   6 April 2016 from the First Respondent  
   15 April 2016 from the Second Respondent

Date of Determination:      18 April 2016

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A.      The first respondent, Mr Deepak Khurana is ordered to contribute \$625 costs and disbursements to the applicant, Mr Surender Singh.**
- B.      The second respondent, Mr Jagat Rawat, is ordered to contribute \$625 costs and disbursements to Mr Singh.**
- C.      Mr Khurana and Mr Rawat are to each pay these costs awards to Mr Singh within 21 days of the date of this determination.**

## **The substantive determination**

[1] In a written determination of the Authority dated 10 February 2016<sup>1</sup>, the Authority determined, in summary, that:

- (a) The former respondent, Corporate Energy Limited (in liquidation) formerly known as Corporate Energy Limited t/a Caltex Glenbrook (Corporate Energy) be struck-out as a respondent to the proceedings in the Authority;
- (b) The former directors of Corporate Energy, Mr Khurana and Mr Rawat, be joined as first and second respondents to the proceedings in the Authority;
- (c) The Authority would continue its investigation into Mr Singh's personal grievance claims against Mr Khurana and Mr Rawat;
- (d) Costs were reserved.

## **Costs memoranda filed by the parties**

[2] Mr Laurent, for Mr Singh, filed a memorandum as to costs seeking costs of \$2,116 from Mr Khurana and Mr Rawat. The costs sought by Mr Laurent are his actual costs. Costs sought represented Mr Laurent's time and attendances in respect of the joinder proceedings in the Authority.

[3] Ms Swarbrick for Mr Khurana submits that the Authority should adopt its normal approach to costs. Ms Swarbrick submits that by seeking his actual costs, Mr Laurent is seeking "*indemnity costs*" which are reserved for cases in which a party behaves badly or very unreasonably which is not the case in this matter.

[4] Ms Swarbrick submits that because this matter was dealt with on the papers, it is somewhat difficult to assess the equivalent of costs in terms of investigation meeting time. If costs are awarded, Ms Swarbrick submits they should be no more than \$500 for which the respondents should be jointly and severally liable.

[5] Mr Gallie submits that Mr Rawat has taken no part in the proceedings and has not contributed towards Mr Singh's costs. Mr Gallie further submits that any joinder

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<sup>1</sup> [2016] NZERA Auckland 38

application should have been made at the outset of the proceedings. Mr Gallie echoes Ms Swarbrick's submissions in relation to "indemnity" costs but says any costs awarded should be apportioned between the respondents.

[6] The joinder application was sought by Mr Singh following the liquidation of Corporate Energy on 3 December 2015.

### **The Authority's power to award costs**

[7] The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000. This confers a wide discretion on the Authority to award costs and expenses as it thinks reasonable.

[8] The principles relating to costs in the Authority are so well settled that I do not propose repeating them here. I adopt the Authority's usual notional daily tariff based approach to costs with the current notional daily tariff being \$3,500.

### **Joinder application dealt with on the papers**

[9] The joinder application was dealt with 'on the papers' so an actual investigation meeting was not required. Each party filed brief memoranda and submissions in respect of the issue.

[10] In *Murphy v The Marketing (Recruitment) Team Ltd*<sup>2</sup>, which was dealt with on the papers, the Authority determined that in respect of costs, the matter warranted a starting point of a half day investigation meeting. This amounted to \$1,750.

[11] *Blakeney- Williams v O'Brien t/a Caci Clinic Taupo*<sup>3</sup> was another matter dealt with by the Authority on the papers. In that matter, the Member determined that the preparation required was such that he assessed it as equivalent to that required for a half day investigation meeting.

[12] My assessment is that the preparation involved in the matter before me does not equate to a half day investigation. I consider 2½ hours to be the starting point, which amounts to \$1,250.

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<sup>2</sup> [2014] NZERA Auckland 109

<sup>3</sup> [2013] NZERA Auckland 486

[13] I do not consider there are any factors which should result in an adjustment to the notional daily tariff.

[14] Accordingly, Mr Khurana and Mr Rawat are to pay Mr Singh the sum of \$625 each towards his costs. Payment is to be made within 21 days of the date of this determination.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**