

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 194/07
AEA 1007/04

BETWEEN PRP AUCKLAND LIMITED
(formerly AXIOM ROLLE PRP
VALUATION SERVICES
LIMITED
Applicant

AND RAHUL RAMESH KAPADIA
Respondent

Member of Authority: Marija Urlich

Representatives: Chris Patterson, for Applicant
In person

Submissions received: 19 January 2007 from Applicant
11 February 2007 from Respondent

Determination: 27 June 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In August 2005 the Authority issued a determination (AA 305/05) which found Mr Kapadia was an employee of PRP Auckland Limited and that he had breached obligations owed to his employer. The Authority did not determine the issue of damages arising from those breaches and suspended its investigation of the employment relationship problem until the parties had participated in further mediation. Costs were reserved.

[2] In September 2005 Mr Kapadia lodged a challenge to the Authority's determination in the Employment Court. Due to a number of factors, including Mr Kapadia no longer residing in New Zealand, the challenge is subject to a stay. Orders for security of costs have been made¹.

¹ Travis J, AC 60/06

[3] PRP requests that the Authority set costs in relation to its determination AA 305/05. Mr Kapadia's comments on this issue have been received and considered by the Authority. It is appropriate that at this "loose end" be tidied. I have received written submissions from the parties.

[4] Mr Patterson, in submissions for PRP, raises the following:

- (i) the applicant seeks a contribution of \$4,750.00 towards actual costs incurred on \$15,000;
- (ii) *Da Cruz*² sets out the principles applicable for the Authority in any consideration of costs;
- (iii) Mr Kapadia's conduct unnecessarily increased costs by failing to settle and/or defending PRP's application in the face of clear evidence;
- (iv) The actual costs incurred by PRP are reasonable given the necessity to commence proceedings in the face of Mr Kapadia's breaches of contract, the requirement to prepare documentation, including agreed set of facts, the requirement to respond to Mr Kapadia's claim that there was no employment relationship and attendance at two mediations;
- (v) PRP was successful and costs should follow the event; and
- (vi) Given the particular characteristics of this case a tariff based approach to setting costs would not be appropriate.

[5] In his submissions Mr Kapadia says:

- (i) PRP raised false and voluminous allegations against him that resulted in complex and expensive litigation;
- (ii) The documentation filed with the authority was done by consent and at his initiative in an effort to contain costs;
- (iii) He has made settlement offers which have not been accepted;
- (iv) The Employment Court challenge has not yet been heard, which may reverse the Authority's findings, it is therefore premature to set costs at this stage;

- (v) His parlous personal circumstances have resulted from PRP's actions;
and
- (vi) PRP retains property belonging to him, for which he seeks an order for their returned.

[6] It is usual that costs follow the event. PRP was the successful party; it is entitled to a contribution to costs reasonably incurred. This determination does not deal with the injunction proceedings lodged before the breach of contract application and not dealt with by the Authority. It is improper that they colour this consideration of costs.

[7] Taking into account the principles articulated in *Da Cruz* and the particular circumstances of this employment relationship problem, including that the investigation was completed in a day, that by consent of the parties³ the issues before the Authority for determination were narrowed to four questions of fact and that the parties properly engaged in settlement discussions, I set the award at \$2700.00. No order for the return of property will be made at this stage. There is inadequate information before the Authority.

[8] This award fairly recognises that this case was out of the ordinary in terms of the complexity of the issues and level of preparation required and seeks to balance those factors against the practical impact of any award on Mr Kapadia given his particular financial circumstances.

[9] Rahul Ramesh Kapadia is ordered to pay PRP Auckland Limited \$2700.0 as a contribution to its legal costs and I so order.

[10] Given that Mr Kapadia now resides overseas, this determination should be electronically conveyed to the parties and a sealed copy forwarded in the usual manner.

Marija Urlich

Member of the Employment Relations Authority

² *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* (9/12/05, Colgan CJ, Travis & Shaw JJ, AC2A/05)

³ paragraph 5, AA305/05

