

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 298
5544209

BETWEEN MURTAZA ABBAS
Applicant

A N D GS NZ LIMITED t/a GRILL
AND SHAKES
First Respondent

FARHAN AMIT SATTAR
Second Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
C Fisher, R L White, Counsel for the Respondents

Submissions received: 15 July 2016 from Respondent
17 July 2016 from Applicant

Date of Determination: 1 September 2016

COSTS DETERMINATION OF THE AUTHORITY

A. The parties are to meet their own legal costs.

Employment relationship problem

[1] Murtaza Abbas had filed several applications including wage arrears, allegations of illegal premiums and a personal grievance application for unjustified disadvantage and dismissal.

[2] Two teleconferences were held. At the first teleconference a preliminary matter of who was Mr Abbas' employer was set down for two days in June 2016. Timetabling directions for filing evidence were also made. The sole issue for

determination was whether the applicant was employed by one or more of the respondents only.¹

[3] Mr Abbas failed to comply with the directions. A further teleconference was set down for 3 June 2016 at 10 am. Mr Abbas advised he was unavailable to attend because he was overseas. The conference proceeded without him, The hearing on 21 June was set aside. Mr Abbas was directed to file his evidence by 1 July 2016. Mr Abbas was put on notice that failure to file any evidence may result in the striking out of this application.

[4] On 27 June 2016 Mr Abbas advised the Authority he wished to withdraw his claim. The respondent now applies for indemnity costs.

Should indemnity costs be awarded?

[5] The respondent has incurred fees of \$5,514.63 excluding GST. Indemnity costs are exceptional so require “exceptionally bad behaviour” or may be awarded where a party has behaved either badly or very unreasonably.²

[6] This matter does not meet the very high threshold required before indemnity costs may be imposed.

What factors should be used to assess costs?

[7] The usual approach to assessing costs in this matter is for the Authority to adopt its usual notional daily tariff based approach to costs. The current notional daily tariff is \$3,500.

[8] Although costs usually follow the event I am concerned that the cost awards sought here are excessive. For a District Court category one civil proceeding at a similar stage of proceeding, the respondent would only be entitled to \$1,593 excluding GST.³ Given the Authority is a substantially less technical arena than the District Court civil jurisdiction and the Members have an investigative role reducing the amount of effort required by Counsel, it is difficult to justify costs in the amount sought.

¹ Minute dated 4 March 2016.

² *Bradbury & Ors v. Westpac Banking Corporation* [2009] NZCA 234.

³ District Court Rules 2014 Schedule 4 and 5.

[9] No investigation meeting occurred. No evidence was filed. The respondent was required to file a statement in reply and attend two teleconferences. However the majority of preparation had not occurred.

[10] The withdrawal occurred before the majority of costs would have been incurred. Mr Abbas' had limited financial means and was at the time of the withdrawal self-represented.

[11] Mr Abbas' claims were not unmeritorious. The statement of problem attached a signed employment agreement with the first respondent. The statement of reply did not deny Mr Abbas was employed and does not deny that he was dismissed on 29 November 2014. He had a strong basis to bring his claim of unjustified dismissal against the first respondent. Both respondents were represented by the same Counsel.

[12] Costs are discretionary. The nature of the case can influence costs and result in an order that costs lie where they fall in certain circumstances.⁴ The appropriate course here in my view is for costs to lie where they fall.

[13] The parties are to meet their own legal costs.

TG Tetitaha

Member Employment Relations Authority

⁴ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808, 819 at [44].