

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 418  
5593075 & 5627732

BETWEEN                      A LABOUR INSPECTOR  
Applicant in 5593075 and  
5627732

AND                              ADAMAR NO. 2 LIMITED  
(IN LIQUIDATION)  
Respondent in matter 5593075

AND                              CORRADO RAMADA  
First Respondent in matter  
5627732

AND                              KIM RAMADA  
Second Respondent in matter  
5627732

Member of Authority:      Robin Arthur

Representatives:            Marija Urlich, Counsel for the Labour Inspector  
Radhe Nand, Counsel for Kim Ramada

Submissions:                By way of memorandum of counsel for the Applicant on  
6 December 2016

Determination:              21 December 2016

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. Kim Ramada must pay \$3500 to the Labour Inspector as a contribution to her costs of representation and a further \$111.56 in reimbursement of expenses also incurred in the Authority investigation.**

[1] By determination issued on 21 November 2016 the Authority found wage arrears of \$70,053.54 were due to eight former employees of Adamar No 2 Limited (in liquidation) and found Kim Ramada jointly and severally liable for the payment of the arrears.<sup>1</sup>

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<sup>1</sup> [2016] NZERA Auckland 380.

[2] Costs were reserved, with the parties encouraged to resolve that issue themselves. The determination gave a preliminary indication that Mrs Ramada would likely be required to pay \$3500, if the Authority were required to determine costs and subject to any submissions from them about the issue. That amount is the daily tariff applied as a starting point by the Authority in assessing costs for investigation meetings on matters lodged before 1 August 2016.

[3] By memorandum of counsel on 6 December 2016 Labour Inspector Rama Yeleswaram advised that the matter of costs had not been resolved by the parties. She sought an order requiring Mrs Ramada to pay \$3500 in costs, along with a further \$271.56 for specific further expenses incurred in preparation for the investigation meeting.

[4] On 7 December Mrs Ramada advised, by email to counsel for the Labour Inspector and copied to the Authority, that she would be challenging the Authority's determination on her liability for the wage arrears. By email on 8 December the Authority advised Mrs Ramada that, whether or not a challenge to the determination was filed in the Employment Court, the Authority would still need to determine costs regarding its investigation. She was reminded that any memorandum in reply to the Labour Inspector's application for costs was due by 20 December. On 16 December Mrs Ramada filed a statement of claim in the Employment Court seeking a full hearing of the matter.<sup>2</sup> By 21 December she had not lodged any reply to the Labour Inspector's memorandum on costs, either personally or through counsel who had represented her in the investigation meeting.

### **Liability for costs**

[5] The Authority has the power to order any party to a matter to pay to any other party such costs and expenses as the Authority thinks reasonable.<sup>3</sup> Assessment of costs typically starts from a notional daily tariff then adjusted upwards or downwards to account for any particular factors relevant in that matter.<sup>4</sup>

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<sup>2</sup> EMPC 342/2016.

<sup>3</sup> Employment Relations Act 2000, Schedule 2 clause 14.

<sup>4</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].

[6] The two day investigation meeting heard detailed evidence from 12 witnesses, including Mrs Ramada, about the wage arrears and her involvement in the management of the company.

[7] The liquidators of the company had consented to the proceedings going ahead, in order to determine wage arrears' liability, but the company in liquidation could not meet any order for costs.

[8] In my estimation more than half of the time over the two days of the investigation meeting concerned evidence regarding Mrs Ramada's involvement in management of the business and her potential liability for the arrears. Because Mrs Ramada was unsuccessful in her denial of liability as an officer of the company, she was then liable to contribute to at least half of the costs of representation of the Labour Inspector.

[9] Counsel for the Labour Inspector, who is an in-house solicitor of the Ministry of Business, did not itemise the hours spent in preparation for and attendance at the investigation meeting. Documents prepared and lodged for the investigation included concise witness statements from the Labour Inspector, eight former employees and two representatives of another company that dealt with Adamar No 2 Limited prior to its liquidation; an extensive bundle of documents; and comprehensive submissions on the legal issues. The material provided and counsel's attendance at the investigation meeting, assessed on the relatively modest notional rate of \$160 an hour used in the Ministry's internal charging for representation of its inspectors, clearly required a great deal more time than the 22 hours or so that would be covered by the Authority's notional daily tariff of \$3500. However the Labour Inspector sought only an award at the level of the tariff for one day, in line with the Authority's earlier indication. It was an amount well within the margin of being only a modest contribution to the reasonably incurred costs of the Labour Inspector in successfully pursuing her application for Mrs Ramada to be held jointly and severally liable for the wage arrears.

### **Expenses**

[10] The Labour Inspector also sought expenses in three categories: reimbursement of the \$71.56 filing fee, reimbursement of an estimated \$40 of photocopying and

postage costs, and reimbursement of witness expenses totalling \$160 for the eight witnesses who were former employees of the company.

[11] The filing fee and photocopying costs, totalling \$111.56, were undoubtedly expenses for which Mrs Ramada should reimburse the Labour Inspector.

[12] However the basis for ordering payment of the witness expenses claimed was not similarly straightforward. Those expenses were incurred as a result of witness summonses sought by the Labour Inspector for the eight former employees. Travelling expenses must be calculated and paid to a witness when a summons is issued.<sup>5</sup>

[13] Each of those eight witnesses was appearing to give evidence in a matter bought by the Labour Inspector for their benefit. The determination confirmed the wage arrears due to those witnesses ranged from \$1618 at the lowest to \$21,836 at the highest. It is unusual for a person to be required to attend under a summons to advance what is effectively their own case. I was not satisfied those witnesses expenses paid by the Labour Inspector, as a result of seeking summonses for the attendance of those witnesses, were amounts Mrs Ramada should be required to reimburse.

Robin Arthur  
Member of the Employment Relations Authority

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<sup>5</sup> Employment Relations Act 2000, Schedule 2 clause 6(4).