

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 33
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BETWEEN A LABOUR INSPECTOR of
 MINISTRY OF BUSINESS,
 INNOVATION AND
 EMPLOYMENT
 Applicant

AND NEELAM AHUJA, CHIRAG
 AHUJA and RHYTHM AHUJA
 (re Khoobsurat Limited) (in
 liquidation)
 Respondents

AND NAARI COLLECTION LIMITED
 (in liquidation) and NEELAM
 AHUJA and CHIRAG AHUJA
 Respondents

AND KHOOBSURAT COLLECTIONS
 LIMITED (in liquidation) and
 NEELAM AHUJA and CHIRAG
 AHUJA
 Respondents

Member of Authority: Eleanor Robinson

Submissions received: 20 January 2017 from Applicant
 None from Respondents

Determination: 8 February 2017

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2016] NZERA Auckland 400 dated 8 December 2016 it was determined that the Respondents were personally liable for a default in minimum wage and holiday entitlements due to a number of ex-employees.

[2] By further determination [2016] NZERA Auckland 420 dated 23 December 2016 it was determined that the Respondents were liable to pay penalties pursuant to s 134A of the Employment Relations Act 2000 (the Act).

[3] In the determinations costs were reserved and the Applicant has filed submissions in respect of costs.

[4] Mr Bennett on behalf of the Respondents was expected to file submissions on 3 February 2017 but failed to do so, and when contacted by the Authority on 7 February 2017 committed to submitting a costs submissions today by mid-day. He failed to do so without explanation, and I therefore proceed to determine the costs.

[5] This matter involved a total of two and $\frac{3}{4}$ days of an Investigation Meeting, with written submissions from the Applicant being submitted subsequent to that. Ms Blick, on behalf of the Applicant, is seeking a contribution to legal costs at the notional daily tariff of \$9,500.00 plus expenses and disbursements of \$850.68.

[6] Ms Blick submits that the cases were not a proceeding between two private parties, nor an employment relationship problem as defined in the Act. Rather it involved the enforcement of minimum statutory standards and the intention behind that legislation to protect workers from exploitation.

[7] Ms Blick notes that the Applicant utilised the services of in-house Counsel in so doing, which was likely to be more economic for the Applicant than instructing private counsel, and more beneficial for the taxpayer.

[8] Ms Blick submits that the Applicant has been put to considerable expense and resource to deal with serious breaches of the minimum code legislation. It required a considerable volume of documentation to be gathered and considered during the course of the preparation for the Investigation Meeting, including three Statements of Problem needing to be prepared.

Principles

[9] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

(1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.

(2) *The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.*

[10] Costs are at the discretion of the Authority, as observed by Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[11] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² as confirmed in *Fagotti v Acme & Co Ltd*.³

[12] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*⁴ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*⁵ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

Determination

[13] As observed, a tariff based approach is that usually adopted by the Authority, and costs normally follow the event. The Applicant is entitled to a contribution towards its costs.

[14] The Applicant has used in-house Counsel in respect of this matter. On the basis of its internal accounting processes, the Applicant submitted that the costs of providing legal services to the Labour Inspector calculated at a notional rate of \$160 per hour for a senior solicitor multiplied by 2¾ days at the notional daily rate of \$3,500.00 per day totalled \$9,500.00.

[15] I find it reasonable for the Applicant to have used in-house Counsel, and find that the costs of so doing have been reasonably incurred.

[16] The Applicant also seeks disbursements as set out in an attached Schedule to the submissions. The disbursements include administration charges, and witness expenses, including the costs of motel accommodation for one of the witnesses and her husband which was necessitated due to the circumstances of the case.

[17] I find the costs as submitted to be reasonably incurred.

¹ [1996] 2 ERNZ 622

² [2005] 1 ERNZ 808

³ [2015] NZEmpC 135 at [114]

⁴ [2005] 1 ERNZ 808

⁵ [2001] ERNZ 305

[18] Accordingly the Respondents are ordered to pay the Applicant the sum of \$9,500.00 towards its legal costs pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[19] The Respondent is to reimburse the disbursements incurred by the Applicant in pursuing this matter, which I also consider to have been reasonably incurred in the sum of \$636.00.

[20] The Respondents are also to reimburse the three filing fee of \$71.56 incurred by the Applicant in the sum of \$214.68.

Eleanor Robinson
Member of the Employment Relations Authority