

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 235
3020951

BETWEEN PRABHJOT SINGH
Applicant

A N D SS CORPORATION LIMITED
TRADING AS GAS STATION
ROAD
Respondent

Member of Authority: Nicola Craig

Representatives: David Prisk for Applicant
Luke Meys for Respondent

Submissions Received: 23 and 25 July 2018 from Applicant
24 July 2018 from Respondent

Date of Determination: 26 July 2018

**COSTS DETERMINATION OF THE
AUTHORITY**

- A. Within 14 days of the date of this determination SS Corporation Limited must pay Mr Singh the sum of \$3,600.00 as a contribution towards his costs and \$71.56 for the Authority's filing fee.**

The substantive determination

[1] In a determination of the Authority dated 29 June 2018¹ the Authority determined that:

- (a) Prabhjot Singh was subject to an unjustified action by SS Corporation

¹ [2018] NZERA Auckland 208

Limited to his disadvantage when he was suspended without pay.

- (b) Mr Singh was unjustifiably dismissed by SS Corporation Ltd.
- (c) SS Corporation Ltd was ordered to pay to Mr Singh the following remedies:
 - (i) Lost wages of \$4244.63 gross; and
 - (ii) Compensation for humiliation, loss of dignity and injury to feelings of \$2,800.00.
- (d) SS Corporation Ltd was ordered to pay to Mr Singh the sum of \$2888.87 gross as holiday pay.

[2] The parties were invited by the Authority to resolve the issue of costs between them, but they were unable to do so.

Mr Singh's submissions

[3] Mr Singh now applies for costs. He was represented on a contingency basis. He signed terms of engagement with Work Law Limited specifying that if he was awarded a financial settlement at the Authority his fees would be 33.3% of the settlement plus a fee for appearing at the Authority of \$1,500 plus GST. The fee is calculated on the net amount he receives. Taking into account Work Law's policy, Mr Singh's fees would be \$4542.66.

[4] On Mr Singh's behalf reimbursement of the actual costs of \$4542.66 is sought.

[5] The Authority's notional daily tariff for a one day investigation meeting is \$4,500. This investigation meeting took around 4.5 hours and so proportionally that would equate to \$3375.00.

[6] For Mr Singh an uplift is sought on the basis of several factors about SS Corporation's actions. These included that SS Corporation (initially) refused to attend mediation and to provide a statement in reply which is said to have increased the length of the hearing.

SS Corporation's submissions

[7] SS Corporation was represented by its director at the investigation meeting but subsequently obtained representation and submissions were filed by counsel on its behalf.

[8] A question was raised about time records and the contingency fee arrangement not having initially been provided to support Mr Singh's costs claim. Subsequently an estimate of the hours spent, given that time recording was not undertaken, and the contingency agreement were filed for Mr Singh. Given the charge out rate² and the hours estimated, it was submitted for Mr Singh that \$5,750 would have been incurred, although not charged to Mr Singh.

[9] It was submitted for SS Corporation that its director acted responsibly throughout the hearing process and that costs should be declined or alternatively awarded at half the notional daily tariff rate.

Costs determination

[10] The Authority has a discretion under clause 15 of Schedule 2 of the Employment Relations Act 2000 to award costs. This discretion must be exercised in a principled way, including consideration of equity and good conscience.³

[11] Mr Singh is effectively seeking reimbursement of his entire actual costs, known as indemnity costs. The Court of Appeal in *Bradbury v Westpac Banking Corporation*⁴ stated that:

... indemnity costs may be ordered where that party has behaved either badly or very unreasonably.

[12] The SS Corporation was not entirely co-operative with the Authority in this matter. No statement in reply was filed. Wage and time records which the Applicant's representative had sought were not supplied until shortly before the investigation meeting. However, SS Corporation did at one point offer to go to mediation although it did not file the statement in reply which the Authority sought before mediation was arranged.

[13] I do not consider that SS Corporation's conduct was so bad or unreasonable as to justify indemnity costs.

[14] To SS Corporation's credit it did accept, once pointed out to it, that it was not entitled to pay Mr Singh the training or starting out rate and subsequently did make payment for the difference between what was paid and the full minimum wage.

² When work is not undertaken on a contingency basis

³ *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808

⁴ [2009] NZCA 234 at [27]

However, the delay in Mr Singh's representative being able to identify that point was caused largely or entirely by SS Corporation's failure to provide wage and time records when requested.

[15] The daily tariff is not designed to reimburse a successful party for their entire actual costs. Rather it reflects a contribution to actual and reasonable costs incurred by the party claiming costs.

[16] Based on the length of the hearing the notional tariff equates to \$3375.00. I do consider that a modest uplift should be given for the additional work necessitated to the Applicant's representative by SS Corporation's conduct.

[17] I order that within 14 days of the date of this determination SS Corporation Limited pay Mr Singh the sum of \$3,600.00 as a contribution towards his costs and \$71.56 for the Authority's filing fee.

Nicola Craig
Member of the Employment Relations Authority