

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURĀU ROHE**

[2019] NZERA 557  
3033952

BETWEEN	PALAV BRAHMBHATT First Applicant
AND	HARDIK GEDIYA Second Applicant
AND	MANINDER SINGH Third Applicant
AND	HEMANT DHAMIJA Fourth Applicant
AND	BHUMIKA KOHLI First Respondent
AND	NZ CLEAN MASTER 2013 LIMITED Second Respondent

Member of Authority:	Robin Arthur
Representatives:	Nathan Santesso, advocate for the applicants David Jaques, counsel for the respondents
Submissions:	20 September 2019 from the applicants and 24 September 2019 from the respondents.
Determination:	30 September 2019

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A. New Zealand Clean Master 2013 Limited (NZCM) and Bhumika Kohli must pay the applicants \$10,500 as a contribution to their costs of representation and reimburse them \$71.56 for the fee paid to lodge their application in the Authority.**

**B. NZCM and Ms Kohli are jointly and severally liable for the total amount of \$10,571.56 in costs and expenses. It must be paid within 28 days of the date of this determination.**

[1] By determination issued on 30 August 2019 the Authority found New Zealand Clean Master 2013 Limited (NZCM) owed wage arrears to the four applicants and ordered NZCM and its director Bhumika Kohli to pay penalties relating to breaches of the applicants' employment agreements.<sup>1</sup> A portion of the penalties imposed, once recovered from NZCM and Ms Kohli, were ordered to be transferred to the applicants. The determination also found Ms Kohli was a person involved in breaches of employment standards under s 142W of the Employment Relations Act 2000.

[2] Costs were reserved with a timetable set for determination by the Authority if the parties could not resolve that issue themselves. The parties were advised the Authority's starting point for assessing costs would likely be \$10,500. That amount is the notional tariff for a three day investigation meeting (being \$4,500 for the first day and \$3,500 for each subsequent day).<sup>2</sup> The substantive investigation meeting took place over two days however it was preceded by an earlier part-day investigation meeting. Ms Kohli was required to attend that earlier meeting under a witness summons, issued by the Authority, requiring her to bring certain documents. Those documents were largely "day sheets" that provided the only records kept by NZCM of work allocated to and done by the applicants. Arrangements were then made for the applicants' representative to review the documents provided under that summons in preparation for the substantive investigation meeting. The associated attendance and preparation time has been acknowledged by the inclusion of a full-day's tariff in the figure given as the starting point for the assessment of costs.

**Submissions on costs**

[3] The applicants' representative advised the Authority that costs had not been agreed and lodged a submission seeking "indemnity costs". No copy of any invoice for fees charged to the applicants was provided to the Authority. Their submission said their legal costs were \$5,000 for Palav Brahmhatt, \$4,000 for Hardik Gediya, \$2,000 for Maninder Singh and \$2,000 for Hemant Dhamija. They sought that amount, totalling \$13,000 plus GST (which is an additional \$1,950).

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<sup>1</sup> *Brahmbhatt & Ors v Kohli and New Zealand Clean Master 2013 Limited* [2019] NZERA 507.

<sup>2</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820.

[4] They submitted the costs award should be for that total amount because their wage arrears claim arose from being exploited as migrant workers and NZCM and Ms Kohli had made the proceedings more “resource intensive”, including by not attending mediation when directed and by failing to keep and to provide necessary documents.

[5] The respondents submitted they had done nothing to extend the hearing and had “sought to comply” with the Authority’s instructions at all times and to assist the investigation into the problems. They submitted any costs order should be against NZCM only, for the tariff amount of \$8,000 for a two day investigation meeting, and no costs should be awarded against Ms Kohli because “her liability simply followed that of the company”.

#### **Assessment of costs**

[6] The Authority was not advised of any settlement offers that required consideration in assessing costs. The nature of the case, and its outcome, meant costs could not be left to lie where they fell. The applicants were entitled to an award of costs because they had succeeded in establishing that they were owed substantial amounts in wage arrears and that wrongdoing by NZCM and Ms Kohli warranted significant penalties.

[7] A costs award may not, however, be used to punish or express disapproval of the unsuccessful parties’ conduct. The serious shortcomings in the respondents’ actions have already been marked by the substantial wage arrears ordered and the significant penalties imposed. While those shortcomings were found to be below the standards required of employers in New Zealand, the conduct of the respondents in this proceeding was not such exceptionally bad behaviour that it crossed the threshold of what is required to impose ‘full’ or ‘indemnity’ costs as sought by the applicants.<sup>3</sup>

[8] There was however an element of what NZCM and Ms Kohli did that warranted increased costs, achieved by the extension to the number of days to which the Authority’s usual daily tariff has been applied. Such an increase may be applied where an unsuccessful party’s conduct unnecessarily or unreasonably increased the costs of the successful party.

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<sup>3</sup> *Bradbury v Westpac Banking Corporation* [2009] NZCA 234 at [28]

[9] In this case the applicants' costs were unnecessarily and unreasonably increased costs by the respondents' delay in producing the day sheets. When Ms Kohli advised the Authority, through counsel, that she was unable to comply with the Authority's directions to provide those records, a witness summons was issued and the records were produced. The extra costs associated with attending the earlier investigation meeting held for that purpose and then spending time reviewing those documents have been recognised by allocating a whole day's tariff in the initial assessment of costs. However delays and difficulties throughout these proceedings were not solely the respondents' doing. A Minute of the Authority issued on 2 November 2018 noted both parties had failed to meet directed dates to provide various relevant documents, or give adequate and timely explanation for their non-availability. For that reason, no further upward adjustment of the tariff was warranted but no downward adjustment was needed either because, on balance, it was the respondents' delays that were of greater negative effect.

[10] Having applied the relevant principles, including considering what is fit in equity and good conscience, \$10,500 was the appropriate amount to confirm as the costs NZCM and Ms Kohli must contribute to the costs of representation of the applicants. They must also reimburse the applicants for the fee of \$71.56 paid to lodge their application in the Authority.

[11] Liability for those costs does not rest solely with NZCM. The evidence established that the problems in this matter arose from actions and omissions by Ms Kohli. This was recognised in the substantial penalty imposed on her personally and the declarations that she was a person involved in breaches of employment standards. The deeds of the company, as a legal entity, and of Ms Kohli, as its director and in person in managing its business, are so intertwined, it is appropriate to follow the normal civil proceedings rule that the liability for costs awarded against both parties is joint and several. Whether one or both parties ultimately pay the costs award, the full amount must be paid. Those costs must be paid within 28 days of the date of this determination.

Robin Arthur  
Member of the Employment Relations Authority