

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2019] NZERA 729  
3063735

	BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT Applicant
	AND	A1 COMMUNICATION LIMITED First Respondent
	AND	HAROLD HIRDESHWAR DEO Second Respondent
Member of Authority:	Rachel Larmer	
Representatives:	Joseph Perrott, counsel for the Applicant No appearance by First and Second Respondents	
Investigation Meeting:	On the papers	
Submissions and further Information Received:	11 December 2019 from the Applicant 19 December 2019 from First and Second Respondents	
Date of Determination:	20 December 2019	

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Labour Inspector successfully claimed penalties against A1 Communications Limited (A1) and Harold Deo, who was a person involved in breaches of minimum employment standards.

[2] Mr Deo's submissions on behalf of the First and Second Respondent said he was not working and could not afford to pay any costs. He did not provide any evidence or information to support that position.

[3] The Labour Inspector as the successful party is entitled to recover a contribution towards his actual legal costs and disbursements.

[4] The Respondents' stated inability to pay should not result in no costs being awarded, but it is instead a relevant factor that will be considered when the amount of costs is being assessed.

[5] The Authority therefore adopts its usual notional daily tariff based approach to costs.

[6] The starting point for assessing costs is to pro-rata the current notional daily tariff, (\$4,500 for the first day of an investigation meeting) to reflect the actual time spent on this matter.

[7] The penalty claims were determined on the papers, so the appropriate notional starting tariff is \$2,250, being half of the current daily tariff.

[8] Neither of the parties identified any factors that they said should result in the notional starting tariff being increased. Nor is the Authority aware of any such factors.

[9] While Mr Deo's claim that the Respondents cannot afford to pay any costs is a factor relevant to an assessment of whether the notional starting tariff should be decreased, the Authority was not satisfied that should occur in this case.

[10] The Labour Inspector was put to considerable time and cost. The matter was dealt with by the Labour Inspector as efficiently as possible. Instead of reducing the amount of costs the Respondents are ordered to pay, their ability to pay can be the subject of discussion with the Labour Inspector to arrange (if possible) an agreed timetable for them to pay costs.

[11] Unsuccessful parties to litigation can expect to face adverse costs consequences.

[12] The Labour Inspector is therefore awarded \$2,250 costs plus reimbursement of the \$71.56 filing fee.

[13] This costs liability should be shared equally between the parties, who are equally culpable for the breaches that resulted in penalties being awarded against them. The Authority notes that Mr Deo was the person who required A1 Communication Ltd to breach its obligations.

[14] The Authority orders Mr Deo and A1 Communication Ltd to pay costs on a joint and severable basis. The Respondents may elect how that liability is to be shared between them.

[15] However, the Authority's order imposing joint and severable costs liability on the Respondents means that if either of the Respondents do not have sufficient funds to pay the Labour Inspector the costs that have been awarded, then the other party can be pursued to pay the full amount of the total costs that have been awarded.

### **Order**

[16] Within 28 days of the date of this determination, A1 Communication Ltd and Harold Deo are jointly and severally ordered (as a result of their joint severable costs liability) to contribute \$2,250 towards the Labour Inspector's costs and to reimburse the Labour Inspector \$71.56 for the filing fee.

**Rachel Larmer**  
**Member of the Employment Relations Authority**

