

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 184
3091712

BETWEEN

TCC SYLVIA PARK
LIMITED
First Applicant

TCC NEWMARKET
LIMITED
Second Applicant

AND

HARLIA SANFT
First Respondent

CHRISTINA BROWN
Second Respondent

LCNZ OPERATIONS PTY
LIMITED
Third Respondent

LCNZ FRANCHISING PTY
LIMITED
Fourth Respondent

Member of Authority: Vicki Campbell

Representatives: Simon Laphorne, counsel for Applicants
No appearance for First and Second Respondents
Alastair Espie, counsel for Third and Fourth
Respondents

Investigation Meeting: On the papers

Submissions received: 28 April 2020 from Applicants
28 April 2020 from Third and Fourth Respondents

Determination: 06 May 2020

COSTS DETERMINATION OF THE AUTHORITY

- A. TCC Sylvia Park Limited and TCC Newmarket Limited are jointly and severally ordered to pay to LCNZ Operations Pty**

Limited and LCNZ Franchising Pty Limited the sum of \$2,250 as a contribution toward costs within 28 days of the date of this determination.

Employment relationship problem

[1] On 13 February 2020 TCC Sylvia Park Limited and TCC Newmarket Limited (together TCC) commenced proceedings in the Authority against Ms Sanft and Ms Brown to prevent them from working for LCNZ Operations Pty Limited and LCNZ Franchising Pty Limited (together LCNZ) respectively. TCC sought orders requiring Ms Sanft and Ms Brown to pay damages for alleged breaches of their employment agreements. TCC also claimed LCNZ had aided and abetted the alleged breaches and sought and penalties against LCNZ.

Interim application

[2] In a preliminary determination dated 2 March 2020 I declined the interim applications for injunctions enjoining Ms Sanft and Ms Brown from certain activities.¹ I reserved the matter of costs which were to be dealt with when dealing with the costs associated with the outstanding matters.

Application for costs

[3] Following the issuing of the determination TCC, Ms Sanft and Ms Brown reached a resolution on the substantive issues and agreed that there would be no order as to costs in respect of the interim proceedings as it applied to TCC, Ms Sanft and Ms Brown.

[4] On 14 April 2020 TCC withdrew its claims for damages and penalties against all respondents. TCC and LCNZ were invited to resolve any outstanding issues as to costs, between them. They were unable to do so and LCNZ has advised the Authority it wishes to pursue costs against TCC. Both LCNZ and TCC have now filed submissions on the matter.

[5] TCC submits that LCNZ should not be awarded costs related to the interim investigation because it was not a party to the question of whether an injunction should be issued against Ms Sanft and Ms Brown.

[6] The interim matter related to the restraining provisions contained in the employment agreements for Ms Sanft and Ms Brown. While LCNZ was not involved

¹ *TCC Sylvia Park Limited & 1 Or v Sanft & 3 Ors* [2020] NZERA 101.

directly in this issue I offered LCNZ the opportunity to be heard through the provision of affidavits and submissions. This was because while LCNZ was not at risk of any orders being made against it there was the potential for any orders relating to Ms Sanft and Ms Brown having an impact on LCNZ's ability to continue to offer work to Ms Sanft and Ms Brown.

[7] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.² The principles applying to costs are well settled and do not require repeating.³

[7] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴ The investigation meeting took half a day so the starting point is \$2,250.

[8] LCNZ has been put to the expense of preparing of a statement in reply and attendance at a case management call. During the case management call I invited LCNZ to make submissions and/or provide an affidavit to support Ms Sanft and Ms Brown. These were provided and were of assistance to the Authority in reaching conclusions on the interim application.

[9] It is appropriate to award costs on the withdrawal of TCC's claims against LCNZ. TCC Sylvia Park Limited and TCC Newmarket Limited are jointly and severally ordered to pay to LCNZ Operations Pty Limited and LCNZ Franchising Pty Limited the sum of \$2,250 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.