

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 199
3085572

BETWEEN

TCC SYLVIA PARK
LIMITED
Applicant

AND

BEHNOOSH
BAHMANPOUR
First Respondent

CELINA CADEIRA
Second Respondent

LCNZ NEWMARKET PTY
LIMITED
Third Respondent

LCNZ PONSONBY PTY
LIMITED
Fourth Respondent

Member of Authority: Vicki Campbell

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

Investigation Meeting: On the papers

Submissions received: 10 May 2020 from Applicant
27 April 2020 from Third and Fourth Respondents

Determination: 15 May 2020

COSTS DETERMINATION OF THE AUTHORITY

A. TCC Sylvia Park Limited is ordered to pay LCNZ Newmarket Pty Limited and LCNZ Ponsonby Pty Limited the sum of \$1,000 as a contribution toward costs within 28 days of the date of this determination.

[1] This determination resolves a costs application which was made after TCC Sylvia Park Limited (TCC) withdrew its claims against all four respondents.

[2] On 20 December 2019 TCC lodged proceedings with the Authority which included an application for interim and permanent orders restraining Ms Bahmanpour and Ms Cadeira from breaching the restraining provisions in their employment agreements and claimed penalties and damages arising out of the alleged breaches. The proceedings included allegations that LCNZ Newmarket Pty Limited and LCNZ Ponsonby Pty Limited (together referred to as LCNZ) had aided and abetted the alleged breaches and claimed penalties against LCNZ.

[3] On the basis of an agreement by LCNZ on 23 December 2019 that Ms Bahmanpour and Ms Cadeira would be located outside a 15 kilometre radius from TCC's premises the need for urgent interim orders were no longer necessary.

[4] The parties attended a case management call with the Authority on 4 February 2020 at which an investigation meeting for the substantive claims was set down for 23 April 2020.

[5] On 14 April 2020 TCC formally withdrew its claims against the four respondents. The parties were invited to resolve any outstanding issues as to costs, between them. LCNZ has advised the Authority it has been unable to reach any agreement with TCC and it wishes to pursue an application for costs. Both LCNZ and TCC have filed submissions on the matter.

[6] The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.¹ The principles applying to costs are well settled and do not require repeating.²

¹ Employment Relations Act 2000, Schedule 2, clause 15.

² *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

[7] The discretion to award costs, while broad, is to be exercised in a principled way. Where a party withdraws proceedings legal costs incurred by the opposing party may be claimed.³

[8] I accept LCNZ incurred the costs associated with drafting and lodging a statement in reply and attending a case management call which took less than 30 minutes. The agreement by LCNZ in December 2019 avoided any continuing breaches of the employment agreements and limited LCNZ's exposure to ongoing aiding and abetting allegations.

[9] Taking into account that costs awards in the Authority are to be moderate and the early agreement by LCNZ to relocate Ms Bahmanpour and Ms Cadeira outside the 15 kilometre radius I consider a contribution by TCC to LCNZ's costs in the sum of \$1,000 to be appropriate in the circumstances.

[10] TCC Sylvia Park Limited is ordered to pay LCNZ Newmarket Pty Limited and LCNZ Ponsonby Pty Limited the sum of \$1,000 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority

³ *Direct Auto Importers (NZ) Ltd v A Labour Inspector* [21018] NZEmpC 39 at [8].