

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 269
3059616

BETWEEN HARSHKUMAR
NARESHKUMAR NAIK AKA
NAYAK
Applicant

AND TUSHARKUMAR
LIMBACHIYA AND MANSI
LIMBACHIYA TRADING AS
TP & MT LIMBACHIYA
PARTNERSHIP
Respondent

Member of Authority: Philip Cheyne

Representatives: Applicant
Bernie Chow, advocate the Respondent

Submissions Received: 30 June 2020 from the Applicant
16 June 2020 from the Respondent

Date of Determination: 6 July 2020

COSTS DETERMINATION OF THE AUTHORITY

A. Harshkumar Nareshkumar Naik AKA Nayak is to pay Tusharkumar Limbachiya and Mansi Limbachiya trading as TP & MT Limbachiya Partnership costs of \$4,500.00 by Friday 17 July 2020.

[1] In my 18 May 2020 determination I ordered Mr & Mrs Limbachiya trading as TP & MT Limbachiya Partnership to pay Mr Naik \$3,226.95 in arrears of wages and holiday pay. Mr Naik's significantly larger claim for arrears of wage and holiday pay based on his assertion that he was not paid anything during his entire employment was

dismissed. Costs were reserved. This determination resolves the respondents' claim for costs.

[2] The partnership seeks costs, given that I did not uphold Mr Naik's claim that he was not paid during his employment. The partnership incurred substantial representation costs in the Authority and elsewhere defending itself against Mr Naik's assertions. I am told that the partnership has limited financial resources. Responding to Mr Naik's claims has caused stress as well as cost.

[3] Mr Naik does not claim costs "at this stage".

[4] Almost all the arrears arose because I found that the terms of Mr Naik's employment fell outside the limited circumstances under the Holidays Act 2003 which allow an employer to pay holiday pay with the employee's regular pay. Although Mr Naik specifically claimed holiday pay, he had not advanced his claim on that basis. However, the failure to comply with the Holidays Act was clear.

[5] Standing back, the employer successfully defended the substantial claim for arrears but was held liable on a different basis for a lower sum, given the partnership's failure to comply with the Holidays Act. The meeting ran onto a second day but most of the time was occupied by consideration of claims which failed.

[6] Mr Naik did not incur legal costs and did not keep a record of any expenses so has no claim for costs. He says he represented himself and the partnership could have too, avoiding legal costs.

[7] The partnership was entitled to be represented so I do not accept Mr Naik's point. On reflection, I accept that the partnership should be regarded as the successful party to an extent. I will treat it as entitled to costs for the first day under the daily tariff but not entitled to any costs for the second day to reflect its partial failure.

[8] There will be an order for \$4,500.00 in the partnership's favour