

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 310
3032271

BETWEEN	JACOB HODGSON Applicant
AND	RURAL NETWORKS LIMITED First Respondent
AND	GREENFIELDS INTERNET LIMITED Second Respondent
AND	TONY REIMANN Third Respondent
AND	WARREN HURST Fourth Respondent

Member of Authority:	Robin Arthur
Representatives	Frances Joychild QC, counsel for the Applicant Philip Skelton QC, counsel for the Third Respondent Catherine Stewart, counsel for the Fourth Respondent
Submissions or information:	From the Applicant on 15 March 2020, from the Third Respondent on 17 April 2020 and the Fourth Respondent on 13 May 2020
Determination:	10 August 2020

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination issued on 21 February 2020 the Authority found Jacob Hodgson was an employee solely of Greenfields Internet Limited (GIL) and not jointly employed by Rural Networks Limited (RNL) or, in their personal capacities, Tony Reimann, the sole director of GIL and RNL, or Warren Hurst, the Network Development Manager of GIL and RNL.¹ The determination found Mr Hodgson was

¹ *Hodgson v Rural Networks & Ors* [2020] NZERA 80.

unjustifiably dismissed and ordered GIL to pay him remedies for the personal grievance. It also ordered GIL to pay him \$97,479.80 for wages and other money due but not paid to him during his two years of employment. Both Mr Reimann and Mr Hurst were also each found to have been a person involved in breaches of the employment standards as defined in s 142W of the Employment Relations Act 2000 (the Act).

[2] The latter finding was important because, if made, Mr Hodgson could then seek leave to recover from Mr Reimann and Mr Hurst personally whatever GIL was unable to pay of those arrears in wages or other money. In a separate application, yet to be investigated and determined, Mr Hodgson has sought such leave under s 142Y of the Act. Mr Reimann and Mr Hurst have also each separately filed challenges in the Employment Court to the findings that they were persons involved in breaches of employment standards. They have not sought a stay of Mr Hodgson's application in the Authority for leave to proceed against them until the outcome of their challenges in the Court is known.

[3] Meanwhile Mr Hodgson has also sought an order for a contribution to his costs of representation in the proceedings that established his employee status, his personal grievance, his entitlement to arrears of wages and other money and the finding that Mr Reimann and Mr Hurst were involved in breaches of employment standards.

[4] Mr Hodgson sought \$8,000 as a contribution to his costs, being the Authority's usual daily tariff for a two day investigation meeting as was held in this case. Through counsel he submitted those costs should be awarded as he succeeded on all claims bar "the minor issue" of whether RNL was also his employer.

[5] Mr Reimann, through counsel, said he was not able to oppose the quantum of costs sought and did not lodge a reply memorandum.

[6] Mr Hurst, in a reply memorandum from his own separate counsel, submitted it would be inappropriate for any costs award to be made against him, saying he had not understood that he was a party to the proceeding at the time of the investigation meeting and was not heard on key questions in relation to his potential liability. Those were also grounds on which he relied in filing his challenge in the Employment Court.

[7] Mr Hurst also submitted that GIL “should be held fully liable for the costs of the proceeding” as the determination had found GIL liable to Mr Hodgson and made “several awards against it”.

[8] Costs in this case are appropriately awarded from the starting point of the usual daily tariff, applying well-established principles to assess what contribution to reasonably incurred costs should be made.²

[9] There was no question that costs sought at tariff level were well within the scope of what could have been reasonably incurred given, as noted in the determination, the extended procedural history of this matter. A detailed assessment was needed of the application of the principles concerning costs following the event (that is relative success), whether any matters were unnecessarily pursued and generated unnecessary costs and how any award should be apportioned between the respondents.

[10] Overall Mr Hodgson was the successful party and entitled to an award of costs. However his success was not total. The outcome rejected a key part of his claim regarding the existence of any employment relationship with RNL, Mr Reimann or Mr Hurst.

[11] The first phase of this matter, dealt with by another Authority member, had ended when the parties adjourned to discuss the employment status issue. The parties had, at that time, eventually agreed that GIL was Mr Hodgson’s employer. A memorandum lodged in the Authority on 5 April 2019 recorded that agreement and Mr Hodgson’s withdrawal of his claim that he was also jointly employed by RNL, Mr Reimann and Mr Hurst. It was signed by an advocate then acting for Mr Hodgson, counsel then acting for Mr Hurst and counsel then acting for the other three respondents.

[12] By the outset of the second phase of the Authority’s investigation and through new counsel, Mr Hodgson resiled from his earlier agreement that his employment relationship was with GIL only. In their amended statement in reply GIL, RNL and Mr Reimann maintained their position that GIL was the employer.

[13] Mr Hodgson’s pursuit of the notion of joint employment by two or more employers was, contrary to his costs submission, more than a “minor issue”. It

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

unnecessarily extended the amount of time required for the investigation meeting. Broadly assessed, the time wasted on that unsuccessful claim warranted a reduction of one quarter of the usual tariff.

[14] Whether the remainder of \$6,000 on a tariff basis could or should be awarded required some assessment of the position of the respondents.

[15] The first point in this assessment concerned the present status of GIL. It has been removed from the Companies Office register. Mr Reimann, at the investigation meeting in person and at other times through his previously-instructed counsel, had undertaken to carry out the steps necessary to have GIL reinstated on the Companies Office register. His previous counsel, on Mr Reimann's instructions, later advised the Authority that reinstatement could not be achieved. In the circumstances as they are now there is no utility in making an award of costs against GIL. In the albeit unlikely scenario that GIL is restored to the register at some later time, leave is reserved for Mr Hodgson to apply for costs to then be ordered against the company. The appropriate portion would likely be \$2,000.

[16] Findings were made about the responsibility of Mr Reimann and Mr Hurst, as respondents in these proceedings, for the situation in which Mr Hodgson was not properly paid over two years of employment. Each was liable to contribute to Mr Hodgson's costs because of their respective roles in how that came to be and the proceedings he had to pursue to establish his employment rights.

[17] In making this costs assessment I have not accepted Mr Hurst's assertion that he did not know or understand that he was still personally involved in these proceedings or could face any personal liability as a result.

[18] As fourth respondent, Mr Hurst was served throughout the proceedings with copies of the relevant documents by the Authority, including an amended statement of problem and the statements in reply of the other respondents, as well as Minutes of the Authority and email correspondence. His decisions about the degree of attention or otherwise that he did or did not give to those documents, and not to make better use of the opportunities available to participate as a respondent in the proceedings, were not reasons to excuse him from the consequences of the outcome, including costs.³ The

³ Employment Relations Act 2000, s 173(2) and Schedule 2 clause 12.

Authority had compelled his attendance at the investigation meeting by issuing him with a witness summons. This was done to get and test information from Mr Hurst needed as a matter of fairness, not only for Mr Hodgson's case but also for the defence formally offered in the amended statement of reply from GIL, RNL and Mr Reimann. GIL and Mr Reimann accepted Mr Hurst had ostensible authority to employ Mr Hodgson on GIL's behalf but said he had done so without the actual authority or knowledge of Mr Reimann as GIL's director.

[19] Mr Hurst attended the investigation meeting from 11am on its first day. He left after he was released from his summons. For more than two hours he had answered questions from me, counsel for Mr Hodgson and counsel for the other three respondents. Those questions and his answers canvassed the history of the company, Mr Hodgson's work, his payment for it and discussions with Mr Hodgson and Mr Hodgson's father about payment for his work. Asked in cross examination if he did not want his answers to get Mr Reimann into any trouble, Mr Hurst answered: "This case will be what it will be, we are both potentially in trouble".

[20] In light of the determination's findings about the role of Mr Reimann and Mr Hurst, individually and together, in the failure to pay Mr Hodgson properly during his employment, both should contribute to his costs in achieving that outcome. The appropriate sum each should pay towards those costs is \$2,000.

Outcome

[21] Mr Hurst and Mr Reimann must each, individually, pay the sum of \$2,000 as a contribution to Mr Hodgson's costs. These costs must be paid within 28 days of the date of this determination.

[22] Leave is reserved for Mr Hodgson to seek a further award of costs against GIL if the company is, by his own or the efforts of others, restored to the Companies Office register.

Robin Arthur
Member of the Employment Relations Authority