

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 562
3061279

BETWEEN	A LABOUR INSPECTOR Applicant
AND	PREEMINENT ENTERPRISE LIMITED First Respondent
AND	AKASH PATEL Second Respondent

Member of Authority:	Robin Arthur
Representatives:	Martin Denyer, counsel for the Applicant Arunjeev Singh, counsel for the Respondents
Memoranda:	On 26 November 2021 from the Applicant. None from Respondent
Determination:	15 December 2021

COSTS DETERMINATION OF THE AUTHORITY

- A. By no later than 30 January 2022 Preeminent Enterprise Limited must pay \$7,000 as costs and expenses to the Labour Inspector.**
- B. By no later than 30 January 2022 Akash Patel must pay \$2,500 as costs and expenses to the Labour Inspector.**

[1] By determination issued on 12 November 2021 the Authority, on an application by a Labour Inspector, ordered Preeminent Enterprise Limited (PEL) and Akash Patel to pay penalties related to breaches of employment standards.¹ The issue of costs was reserved. As the parties were not able to resolve costs between themselves, the Labour Inspector lodged a memorandum seeking an order for costs

¹ *Labour Inspector v Preeminent Enterprise Limited & Patel* [2021] NZERA 501.

and expenses. A timetable was in place for a reply to the Inspector's claim for costs but PEL and Mr Patel did not lodge any reply memorandum.

[2] The Inspector sought an award of costs at the Authority's usual daily tariff for the two day investigation meeting held in this matter, that is \$4,500 for the first day and \$3,500 for the second day. She also sought an order for expenses of \$1,505 incurred for the translation of audio recordings of a conversation between a former employee of PEL and Mr Patel. The expenses included preparation of a written transcript of the recording.

How costs in the Authority are assessed

[3] The Authority is empowered to order any party to a matter to pay to any other party such costs and expenses as the Authority thinks fit. It may also apportion any such costs and expenses between the parties as it thinks fit.² The Authority's exercise of these discretions is carried out by applying well-established "basic tenets" to the particular circumstances of the case.³

[4] Those tenets include exercising the discretion in a principled and not arbitrary way; considering equity and good conscience on a case-by-case basis; inflating or reducing an award to take account of party conduct that unnecessarily increased costs; considering whether any of the parties' costs were unnecessary or unreasonable; applying a discount to a cost award if settlement offers made to the successful party were better than the outcome eventually reached in the Authority's determination; that costs 'follow the event' of success; and that the amount awarded in costs should be modest.

[5] Each case is considered on its own merits. A daily tariff is typically taken as a starting point. Undue rigidity in application of the tariff is avoided by principled adjustments upwards or downwards from that starting point in order to account for particular characteristics of a case, including a liable party's means to pay costs, the preparation required in particularly complex matters and the conduct of the parties.

² Employment Relations Act 2000 Schedule 2 clause 15.

³ *PBO Limited v Da Cruz* [2005] ERNZ 808 at [44]-[46].

Assessment of costs

[6] This matter has a long procedural history. The Inspector's first statement of problem was lodged in May 2019 with an amended statement of problem lodged in January 2020. Following mediation an agreement was reached on payment of wage arrears. Arrangements were then made for the Authority to determine the remaining issue of penalties on the papers. Submissions were prepared and lodged but disclosed significant disputes of fact that required a two day investigation meeting.

[7] The documentation prepared by the Inspector for her initial application was necessarily extensive. A high level of preparation was also required for the investigation meeting as there was detailed examination of the available evidence about what had happened in the workplace. This all supported a conclusion that costs at the tariff rate were well within the range of what could reasonably be incurred for a matter of this type.

[8] Costs followed the event of the Inspector's success in her application and there was no claim that they should be increased for any conduct by PEL or Mr Patel that unnecessarily increased the Inspector's costs. There was no information that would support a reduction of the tariff rate on the basis of the ability of PEL and Mr Patel to pay costs.

[9] Accordingly \$8,000 is the appropriate amount to order PEL and Mr Patel to pay as to the Labour Inspector as a contribution to the costs of representation incurred in bringing her successful application to the Authority.

Assessment of expenses

[10] The translation and preparation of a written transcript of the audio recording was essential for that piece of evidence which included conversation in Hindi. The Inspector has provided the itemised invoices for the translator's services. The amount paid was a reasonably incurred expense. An order for reimbursement of that expense, rounded to \$1,500, was appropriate.

Apportionment of costs and expenses

[11] The Inspector made no submission on how costs and expenses could or should be apportioned between PEL and Mr Patel.

[12] PEL and Mr Patel were each separately ordered to pay a penalty in relation to breaches of employment standards. The costs and expenses could sensibly be separately apportioned rather than imposing a joint and several liability for those amounts.

Order

[13] PEL is ordered to pay \$6,000 of the costs and \$1,000 of the expenses. Mr Patel is ordered to pay \$2,000 of the costs and \$500 of the expenses. Payment of those amounts must be made to the Inspector by no later than 30 January 2022.

Robin Arthur
Member of the Employment Relations Authority