

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 37
3053413

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Applicant
AND	BASRA & KHELLA LIMITED Respondent

Member of Authority: Nicola Craig

Representatives: Joseph Perrott, counsel for the applicant
Arunjeev Singh, counsel for the respondent

Investigation Meeting: On the papers

Submissions Received: 12 and 26 January 2021 from the applicant
26 January 2021 from the respondent

Date of determination: 2 February 2021

COSTS DETERMINATION OF THE AUTHORITY

A Basra and Khella Limited is ordered to pay, within 28 days of the date of this determination, the Labour Inspector \$15,000.00 as a contribution to her costs and \$1,406.93 as disbursements.

[1] In a determination on 22 December 2020 the Authority ordered Basra and Khella Limited (B&K or the company) to pay \$24,476.25 arrears plus interest to a Labour Inspector of the Ministry of Business, Innovation and Employment (MBIE) for

the use of a former B&K employee.¹ The company was also ordered to pay a penalty of \$18,000 for minimum standards breaches.

[2] The parties were directed to attempt to sort out the question of costs between themselves but have not been able to do so. The Labour Inspector now applies for an order for costs.

[3] Both parties filed submissions and further information was provided from the Labour Inspector.

The Labour Inspector's application

[4] Legal costs of \$18,500 and expenses of \$1,408.93 are sought. The legal costs claim is based on the Authority's notional daily tariff. The Labour Inspector argues that costs associated with the use of in-house counsel should be recognised through a costs award.

B&K's response

[5] The company argues that it lost income as a result of having to attend the investigation meeting for five days. The business was opened late on those days as a result.

[6] Further, the company says its conduct did not contribute to the hearing being extended to five days. B&K considers that it validly raised concerns and should not be responsible for the length of the hearing. It had to pay its own counsel's costs.

[7] Ultimately B&K concludes that costs should lie where they fall.

The outcome

[8] The Labour Inspector was successful in most of her claims with the claim for a premium not being established. The starting position is that the Inspector is entitled to a contribution to her costs. In-house counsel have been involved from the time of preparation of the statement of problem.

[9] The investigation meeting was held over five days. I therefore start at the notional daily tariff rate of \$18,500, incorporating \$4,500 for the first day and \$3,500

¹ *A Labour Inspector of the Ministry of Business, Innovation and Employment v Basra & Khella Limited* [2020] NZERA 534.

for each of the remaining days. The Labour Inspector used in-house counsel from the time of preparation of the statement of problem onwards. Costs incurred through the use of in-house counsel may be the subject of a costs award.²

[10] B&K were entitled to challenge the evidence given for the Inspector. However, ultimately the company was not successful in establishing that the breach and arrears claims against the company were invalid. In the absence of evidence of an offer to pay the arrears, I conclude that the Labour Inspector had no choice but to pursue this matter through the Authority process.

[11] I have considered whether a reduction should be made for the unsuccessful premium claim. A proportion of the investigation meeting time was dedicated to evidence relating to that claim which was ultimately unsuccessful. A modest deduction is justified.

[12] B&K is ordered to make a contribution to the costs of the Labour Inspector by paying the sum of \$15,000 within 28 days of the date of this determination.

[13] The Labour Inspector claims several expenses related to the preparation for and involvement in the investigation meeting, with some supporting documentary evidence provided.

[14] The Inspector should be reimbursed for the following disbursements:

- (a) \$71.56 for the Authority's filing fee;
- (b) \$140.00 for the audio translation costs for recordings used in the investigation;
- (c) \$880.47 in flight costs to Auckland for the employee and his partner who gave evidence at the investigation meeting;
- (d) \$167.00 for the re-scheduling of their flights; and
- (e) \$147.90 for their accommodation.

² For example, references in *Innovative Landscapes (2015) Ltd v Popkin* [2020] NZEmpC 262.

[15] I order B&K to pay \$1,406.93 to the Labour Inspector for disbursements within 28 days of the date of this determination.

Nicola Craig
Member of the Employment Relations Authority