

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 142
3165361

BETWEEN	KAYLA BISHOP Applicant
AND	CHARCOAL CHICKEN 2020 LIMITED Respondent

Member of Authority: Marija Urlich

Representatives: Andrea Kelleher, advocate for the Applicant
Yashwant Patel, representative for the Respondent

Investigation Meeting: 16 March 2023

Determination: 22 March 2023

DETERMINATION OF THE AUTHORITY

[1] The investigation meeting scheduled for 16 March 2023 was adjourned because Charcoal Chicken 2020 Limited (CCL) and Mr Ismail did not attend. Having heard from the parties' the Authority ordered CCL and Mr Ismail to contribute \$500 to Ms Bishop's costs within 7 days of that date. The reasons for the costs order are set out below.

[2] On 13 March 2023 the Authority convened a case management conference to deal with an application by CCL and Mr Ismail to adjourn the scheduled investigation meeting because one of their witnesses could not attend due to a health concern. The adjournment application was declined, options for the witness to give their evidence was discussed including by audio visual link or at a resumed date and leave given to provide further information. It was made clear to the parties that while the witness may be able to provide evidence as to general workplace conditions if they could not give

direct evidence as to the events which had given rise to the employment relationship problem they were unlikely to be considered a key witness. On 14 March Mr Patel provided further information regarding the witness. The information did not state the witness could not attend remotely. The Authority acknowledged the further information and confirmed the scheduled investigation meeting would proceed. On 15 March Mr Patel forwarded to the Authority a communication between the witness and Mr Ismail concerning the witness's health status. Again, it was not clear on the face of this information that the witness could not attend the investigation meeting remotely. The parties were advised they could address the Authority further on whether an adjournment would be necessary at the outset of the investigation meeting.

[3] After the scheduled start time of the investigation meeting had passed an Authority Officer, on my direction contacted Mr Patel by telephone who then joined the investigation. He advised CCL and Mr Ismail did not attend because the witness who had been the subject of the earlier adjournment application had had to return to hospital overnight. For completeness no medical certificate or other similar supporting information had been provided in support of the adjournment application or subsequently. In response to a proposal to delay the start of the investigation meeting by an hour to allow Mr Patel, Mr Ismail and the other witnesses to attend, Mr Patel said it would not be possible to make the necessary arrangements for that to occur in that timeframe.

[4] Unfortunately, the situation appears to be the Authority and Ms Bishop understood the investigation was to proceed as scheduled and CCL and Mr Ismail did not. As the narration above shows there was no reasonable basis for CCL and Mr Ismail to believe the investigation would not proceed as scheduled. Mr Patel accepted CCL and Mr Ismail's non-attendance had put Ms Bishop to cost and inconvenience and a contribution to those costs would be reasonable.

[5] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. It was appropriate to exercise my discretion and set costs at this point in the investigation of the employment relationship problem and a reasonable contribution to costs, which are accepted to have been incurred, given the relevant factors including the short duration of the investigation meeting is \$500.

[6] The parties will be contacted shortly by the Authority Officer to reschedule the investigation meeting.

Marija Urlich
Member of the Employment Relations Authority