

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2023] NZERA 268
3069193

	BETWEEN	HARMANDEEP SINGH Applicant
	AND	NIKHIL HIMALAYA HOLDINGS LIMITED First Respondent
	AND	NIKHIL HIMALAYA TAIHAPE LIMITED Second Respondent
	AND	RAVINDER KUMAR ARORA Third Respondent
Member of Authority:	Geoff O’Sullivan	
Representatives:	Gerardus Elwell, counsel for the Applicant Myriam Mitchell, counsel for the Respondents	
Investigation Meeting:	On the papers	
Submissions Received:	18 April 2023 from the Applicant 4 May 2023 from the Respondent	
Date of Determination:	25 May 2023	

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 4 April 2023 I issued a determination concluding that Harmandeep Singh had been unjustifiably dismissed by Nikhil Himalaya Taihape Limited (NHTL).

[2] Initially, Mr Singh had brought his case against two other parties, namely Nikhil Himalaya Holdings Limited (NHHL) and Ravinder Kumar Arora. He was unsuccessful against

those two parties for the reasons set out in my determination. Costs were reserved and the parties were encouraged to resolve any issue of cost between themselves. They have been unable to do so and Mr Singh now seeks a contribution towards his costs as do NHHL and Mr Arora.

[3] The Authority has adopted and publicised a daily tariff approach as a starting point for considering costs. Good reason is required to depart from this approach. The current tariff is \$4,500 for the first day and \$3,500 for the second day and subsequent days.

Principles

[4] The power of the Authority to award costs is contained in c 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

The parties' submissions

Mr Singh

[5] On behalf of Mr Singh, his counsel, Mr Elwell, notes that the notional daily tariff of \$4,500 is a starting point for the first day in the Authority for the investigation meeting, with a further \$3,500 for any subsequent day. He notes that the investigation meeting was over two days, namely 19 January 2022 and 20 January 2022.

[6] Mr Singh claims a further \$1,125 on the basis of the unsuccessful challenge relating to the Applicant's representative.

[7] I am not persuaded it is appropriate that the Applicant be granted costs in relation to the challenge in respect of the Applicant's representative. First, there did appear to be a clear agreement that the previous representative would not appear in the case. However, the Authority's view was that it had no ability under the circumstances to dictate who the Applicant chose to represent him. It was open to the Respondent to attempt to enforce the agreement

(that Mr Segal would not represent the Applicant) in another forum. Secondly, Mr Elwell acted as counsel for Mr Singh in any event in place of Mr Segal.

Nikhil Himalaya Taihape Limited, Ravinder Arora and Nikhil Himalaya Holdings Limited

[8] NHHL and Mr Arora seeks costs against the Applicant based on the tariff of \$4,500 for the first day and \$3,500 for the second day. This is on the basis that both NNHL and Mr Arora successfully defended Mr Singh's claims.

[9] Standing back however, Mr Arora was in essence the main witness for all respondents. He is the person behind NHHL and of course the human face of NHTL which was found to have unjustifiably dismissed Mr Singh. Accordingly, it is difficult to see that in terms of him being required to defend each of the entities at the investigation meeting added extra time. He needed to be there in any event.

[10] Ms Mitchell submits on behalf of NHHL and Mr Arora that claims in respect of wages and annual leave took up the majority of the scheduled time. She also notes that most legal submissions made by the parties were on the issue of whether wages and annual leave were owing to the Applicant by NHHL. She submits the three respondents were each put to great expense, including the need to engage a payroll expert to review all available time and wage records. She says that Mr Arora incurred additional costs through being personally named as a party and the need to submit substantial legal submissions on whether he could be held to be personally liable.

[11] Ms Mitchell finally submits that NHHL should be awarded the daily tariff for a two-day investigation meeting, namely \$8,000 and that Mr Arora should also receive the same. Finally, she submits that in respect of NHTL, costs should lie where they fall.

Conclusion and orders

[12] Mr Singh was successful in his action against Nikhil Himalaya Taihape Limited and although it can be said he has had mixed success, nonetheless he was successful in his argument of unjustified dismissal and costs should follow that event.

[13] In respect of Mr Singh's further claim for a quarter of the daily tariff in respect of costs incurred arguing about representation, I accept Ms Mitchell's submission that costs should lie where they fall in respect of the interlocutory application for the reasons set out in [7] above.

[14] As stated above, Mr Arora needed to be present in respect of all claims in any event. Having said that, I accept that the length of the investigation meeting stretched to two days and the reason for this were Mr Singh's arguments regarding wages and annual leave claims, and the arguments in respect of whether Mr Arora was a person involved in breaches of minimum entitlements. Without that evidence I estimate the investigation meeting would have lasted one day and accordingly Mr Singh is entitled to tariff costs for that day.

[15] Accordingly, I order Nikhil Himalaya Taihape Limited to pay Harmandeep Singh the sum of \$4,500 plus a filing fee of \$71.56 as a contribution towards the costs Mr Singh incurred on account of costs.

Geoff O'Sullivan
Member of the Employment Relations Authority