

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 61
3134416
3136423

BETWEEN	SONJA POTGIETER Applicant
AND	BLISS BEAUTY NZ LIMITED First Respondent
AND	RONALD AJIT NARAYAN Second Respondent
AND	RONICA DEVI Third Respondent

Member of Authority: Alastair Dumbleton

Representatives: Geoff Martin and Louise Smith, advocates for Applicant
Rajendra Chaudhry, counsel for Respondents

Costs submissions received: 1 and 8 November 2022

Determination: 9 February 2023

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The parties' costs submissions are not supported by copies of invoices and the Authority must assume that the parties have expended at least the amount of costs to be awarded them.

[2] Costs will be determined on the basis of the Authority's daily tariff often used in this exercise.

[3] The current tariff is \$4,500 for the first day and \$3,500 for each subsequent day. The investigation meeting was held over three days.

[4] The applicant Ms Potgieter was successful in her claims against Bliss Beauty NZ Ltd (BBL). She was also successful in obtaining leave to join the third respondent Ronica Devi but was unsuccessful with substantive claims against her.

[5] Leave was not required to join the second respondent Ronald Narayan. He successfully opposed the applicant's substantive claims against him personally.

[6] The Authority estimates that little more than one day was sufficient for the applicant's claims against BBL alone to be investigated and about half a day was sufficient for the joinder application against Ms Devi. The strength of the claims against BBL were clear from the start. After the investigation meeting in March the Authority was able to give a provisional view that BBL had unjustifiably dismissed Ms Potgieter.

[7] An award of costs uplifted from \$4,500 to \$4,750 is made to the applicant for payment by BBL. The applicant is entitled to \$2,250 from Ms Devi for the successful joinder application.

[8] The second respondent needed to attend the investigation meeting as a vital part his company's opposition to the applicant's claims, regardless of the claim against him personally. The Authority acknowledges that as a party he may have been still obliged to pay legal expenses separately from BBL. Reasonable costs invoiced could have treated BBL and Mr Narayan as one client rather than two. BBL could only give instructions through Mr Narayan.

[9] Allowing for his dual role in the investigation, Mr Narayan is to have costs of \$3,500 for successfully opposing the claims against him personally, to be paid by the applicant.

[10] As a joined controlling third party, Ms Devi faced the same or similar liability to BBL. She will have costs based on 2 days of investigation meeting, or \$7,000, to be paid by the applicant.

Orders

[11] In the overall result the applicant is to pay costs of \$3,500 to the second respondent and \$7,000 to the third respondent.

[12] The third respondent is to pay costs of \$2,250 to the applicant.

[13] The applicant will therefore receive a total of \$7,000 in costs from the first and third respondents; \$4,750 from BBL and \$2,250 from Ms Devi.

[14] The applicant will pay \$10,500 in costs to the second and third respondents.

[15] Therefore, net costs to the third respondent Ms Devi are \$4,750.

[16] The claims for expenses are not supported by receipts. The three respondents will be allowed in total half the amount of \$193.25 claimed, to be paid by the applicant.

[17] For the applicant the travelling expenses for two advocates is disallowed. The applicant will be allowed \$850 as reasonable expenses including the Authority's fees, to be paid \$650 by BBL and \$200 by Ms Devi.

[18] The orders for costs are made under clause 15 of Schedule 2 of the ER Act.

Alastair Dumbleton
Member of the Employment Relations Authority