

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 235
3133457

BETWEEN SIMRANJIT SINGH
 Applicant

AND THE NEW ZEALAND
 NANAKSAR THATH ISHER
 DARBAR
 Respondent

Member of Authority: Peter Fuiava

Representatives: May Moncur, advocate for the Applicant
 Michelle Pollak, counsel for the Respondent

Submissions received: 7 February and 1 March 2024 from the Applicant
 5, 16, 28 February and 2 April 2024 from the Respondent

Determination: 23 April 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination dated 10 January 2024,¹ I dismissed a claim brought by the applicant whose real name is Tarsem Singh (Tarsem). I found that Tarsem was not employed by The New Zealand Nanaksar Thath Isher Darbar (the Temple) as a maintenance/repair worker but only as an assistant volunteer priest for the Temple.

[2] The question of costs was reserved and if the parties were not able to reach their own agreement, timetabling directions were made for the filing of memoranda. Because counsel for the Temple, Ms Pollak, was on annual leave when my determination was issued, I granted the Temple an extension of time to file its costs submissions.

¹ *Simranjit Singh v The New Zealand Nanaksar Thath Isher Darbar* [2024] NZERA 8.

Application for costs

[3] The Temple seeks an award of costs of \$41,250 against Tarsem which is a straight application of the Authority's notional daily tariff (\$4,500 for the first day of any matter and \$3,500 for any subsequent day of the same matter) for an eleven-and-a-half-day investigation meeting. The Temple has provided evidence of a Calderbank offer (19 October 2022) that was made on the basis that it did not accept the validity of the applicant's claim. The offer was made some four weeks before the investigation meeting. Ms Pollak says that the offer was never responded to by Tarsem or his representative.

[4] Even so, the Temple does not rely on what appears to be on its face a valid Calderbank offer but submits that it is nevertheless entitled to costs of \$41,250 as it was put to unnecessary expense of 11.5 days of investigation meetings. Copies of Ms Pollak's invoices to the Temple were provided which record total actual costs of \$71,917.87. The Temple is amenable to having costs repaid by instalments of no less than \$150 per week for 275 weeks. If Tarsem were to return to India, the Temple seeks an assurance that his payments would continue and it has indicated that it will seek a distress warrant over his vehicle as security and an attachment order on his wages if he is working. However, these enforcement matters are for the District Court and not the Authority.

Tarsem's submissions in reply

[5] Ms Moncur's costs submissions are brief but to the point. She forwards an email from Tarsem that records that his current financial situation is 'very bad' and that he does not have any savings for 'basic things'. In addition to feeling stressed for losing the case, Tarsem's states that he worked for the Temple for seven years 'for free' and that he does not have any money to pay such a large amount. A further email from Tarsem (9 February 2024) mentions that he has been suspended by his employer (who he does not name) as a result of media reporting of his case. I do not know whether Tarsem has since returned to work or is earning an income from an alternate source.

[6] Ms Moncur provides the Authority with a document from ASB that confirms that Tarsem's account balance as of 9 February 2024 was \$1,439.52. The bank makes no other representation concerning the day-to-day operation of the account.

Analysis

Costs in the Authority

[7] The Authority has the power under clause 15 of Schedule 2 of the Employment Relations Act 2000 to award costs. The principles and approach adopted by the Authority in respect of this power are well settled and are outlined in its practice note on costs which is available to the public online.²

[8] The general principle is that the successful party should be awarded costs from the other party. This is also known as ‘costs follow the event’. Here, the Temple is the successful party having defended itself against Tarsem’s claim that he was owed wages as a repair/maintenance worker. The Temple therefore seeks costs of \$41,250 for eleven-and-a-half days of investigation meetings based on the notional daily tariff. As the successful party, the Temple could potentially be awarded this amount unless there is good reason to depart from the tariff.

[9] The Employment Court in *PBO Ltd v Da Cruz* found nothing wrong in principle with the Authority’s tariff-based approach as long as it was not applied in a rigid manner without regards to the particular circumstances of the case.³

[10] The present case took as long as it did because both sides to this employment problem called multiple witnesses, most of whom required the assistance of a Punjabi interpreter. How much more time this may have added to the investigation meeting is not readily quantifiable.

[11] However, what is more apparent, is evidence of impecuniosity or a lack of ability to pay costs. I noted in my determination that Tarsem had worked as an Uber driver in April 2019 but that this was without the Temple’s prior knowledge or approval.⁴

[12] As requested, Tarsem provided evidence of his earnings from driving for Uber which record that his ‘total transportation income’ for the 2019/2020 financial year was \$64,308.86. I note that Tarsem’s Uber earnings fell considerably the following year,

² www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

³ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 at [46].

⁴ n 1 at [28] and [73].

the 2020/2021 financial year, to \$37,002.25 and that downward trajectory of earnings appears to have only plummeted further with earnings of \$3,916.49 in 2021/2022. Cumulatively considered, Tarsem's earnings from Uber are modest particularly as the cost of fuel, vehicle maintenance, road user charges and any other business-related expenses are yet to be deducted from these figures.

[13] Prior to working for Uber, Tarsem worked as a volunteer assistant priest for the Temple initially as the holder of a work visa as a religious worker (under the pseudonym of Simranjit Singh) and latterly as the holder of a residence class visa under the work to residence/religious worker category. As a volunteer assistant priest whose day-to-day needs were met by the Temple,⁵ Tarsem was not paid a wage for his priestly work and therefore has no savings from that work to call upon in order to pay costs.

[14] Further, at [11] of my determination, I noted that Tarsem had first arrived in New Zealand as the holder of a student visa. He was 21 at that time and the cost of his student visa application amounted to \$15,800, which was paid for by his father, a wheat farmer. The father had taken out a farming loan to pay for his son's tuition fees. By the time Tarsem was required by Immigration New Zealand to return to India in July 2011 (having breached the terms of his student visa), he had incurred a student debt of \$20,000.⁶ There is no evidence that this debt has been paid.

[15] For the reasons given above, I am satisfied that Tarsem is experiencing considerable financial hardship both here in New Zealand and in his country of origin of India. This warrants a significant downwards adjustment to the notional tariff and if no such adjustment is made, the danger is that the tariff becomes unduly rigid and out of step with the Authority's modest approach to costs.

Conclusion

[16] As the successful party, the Temple is entitled to receive an award of costs in its favour. However, a straight application of the notional tariff over an eleven-and-a-half-day period without a significant downwards adjustment that takes into account Tarsem's lack of ability to pay will result in considerable financial hardship for both him and his immediate family. On balance, I reduce costs by 75 percent.

⁵ n 1, at [84].

⁶ At [13].

Order

[17] Simranjit Singh also known as Tarsem Singh is to pay The New Zealand Nanaksar Thath Isher Darbar \$10,312.50 as a contribution to its costs in this matter. The costs determination is to paid no later than 40 days from the date of this determination.

Peter Fuiava
Member of the Employment Relations Authority