

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 589
3228920

BETWEEN	SHARNPREET KOUR Applicant
AND	ARVIND AND SHALINI'S CAKES LIMITED (IN LIQUIDATION) First Respondent
AND	UGESHNI SHALINI NAIDU Second Respondent

Member of Authority:	Sarah Blick
Representatives:	John Wood and Sunny Sehgal, advocates for the applicant First respondent not represented Ugeshni Shalini Naidu in person
Investigation meeting:	On the papers
Information and Submissions received:	19 August 2024 from the applicant None for the respondents
Determination:	4 October 2024

DETERMINATION OF THE AUTHORITY

[1] In a determination dated 8 August 2024 Sharnpreet Kour was successful in seeking orders for arrears of wages and holiday and leave pay, interest and a penalty.¹

[2] The Authority reserved the issue of costs. Ms Kour now seeks costs. Her memorandum seeking costs was served on the respondents, but there have been no submissions or communications with the Authority from the respondents in accordance with the Authority's timetabling. Costs are now determined on the papers lodged.

¹ *Kour v Arvind & Shalini's Cakes Limited (in liquidation) and Anor* [2024] NZERA 475.

Costs

[3] Costs are a matter of discretion. The discretion is to be exercised in accordance with principle and not arbitrarily. Costs normally follow the event, so that if a party is successful, they are normally entitled to an award of costs.

[4] The starting point for costs based on the Authority's daily tariff is \$4,500 for the first day. After adopting an appropriate starting point the Authority can consider whether there are factors justifying an increase or decrease in costs.

Submissions

[5] Submissions on Ms Kour's behalf stated the starting point for the daily tariff is \$2,250, with the investigation meeting taking half a day.

[6] An increase on that is sought due the stated failure of the respondents to participate in the process. It is submitted the costs award should be increased to reflect the extra costs Ms Kour was put to. No witness statements were lodged by the respondents which put Ms Kour representative in a position of needing to prepare for what the respondents might say and not what they were likely to say.

[7] Further, submissions were not made on the day and so it was submitted that costs should be increased to recognise the time that they took to draft.

[8] An amount equal to another quarter day to give total costs of \$3,375 is suggested.

[9] There are no submissions from either respondent to consider.

Costs award

[10] Ms Kour is entitled to an award of costs as the successful party.

[11] The Authority's investigation meeting took a half day, amounting to \$2,250 of the tariff.

[12] I consider that a small uplift is justified. Ms Naidu's failure to meaningfully participate in the Authority's investigation leading up to the investigation meeting led to increased time involved in progressing Ms Kour's claim which I accept has increased the cost of Ms Kour's representation.

[13] I consider an award for costs in the amount of \$3,000 plus the application fee of the Authority is appropriate.

Orders

[14] I order Arvind and Shalini's Cakes Limited and Ugeshni Shalini Naidu to pay an award of costs to Sharnpreet Kour in the amount of \$3,000 and the application fee of \$71.55, within 14 days of the date of this determination. The respondents are jointly and severally liable to pay these amounts.

Sarah Blick
Member of the Employment Relations Authority