

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2024] NZERA 727
3216765

BETWEEN	VISHAL SATIJA Applicant
AND	EPIPHANY DONUTS NEWTOWN LIMITED First Respondent
AND	EPIPHANY DONUTS WAIKANAĒ LIMITED Second Respondent
AND	IVY CRISELDA TAN- AZUCENA Third Respondent
AND	OTTO AZUCENA Fourth Respondent

Member of Authority:	Rowan Anderson
Representatives:	John Wood, advocate for the Applicant Otto Azucena, for the Respondents
Investigation Meeting:	On the papers
Submissions received:	26 October 2024 from the Applicant 14 November 2024 from the Respondents
Determination:	5 December 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] On 2 October 2024 the Authority issued a determination¹ in which I found that there was a binding settlement agreement as between Mr Satija and Mr Azucena, and the First and Second Respondents. In that determination I made orders requiring Mr

¹ *Satija v Epiphany Donuts Newtown Limited and Ors* [2024] NZERA 580.

Azucena and the First and Second Respondents to make payment of the outstanding sum due under the settlement agreement.

[2] Costs were reserved. The parties have not been able to agree on costs, and Mr Satija now asks the Authority for orders as to the costs he incurred in pursuing his claims against the respondents.

[3] Mr Satija seeks a total contribution towards his costs of \$9,000. The basis for that claim is that the investigation meeting comprised a half day and a full day, that an uplift of a quarter day is appropriate taking into account the preparation of written submissions, and that a further uplift equivalent to a quarter day is warranted on the basis of delays said to be attributable to Ms Azucena. Mr Azucena's response to the application for costs is that he is the one who should be compensated.

Costs principles

[4] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.²

[5] The daily tariff is usually taken as a starting point,³ although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

Consideration

[6] Mr Satija was successful in pursuing his claims and it is appropriate that costs follow the event.

[7] The substantive proceeding involved the setting down of a two-day investigation meeting commencing on 29 February 2024. While the investigation meeting on 29 February 2024 commenced briefly, the meeting was ultimately adjourned and then reconvened on 1 July 2024. The investigation meeting on 1 July 2024 consumed most of a full day.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ Employment Relations Authority Practice Direction, August 2023, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>

[8] In my substantive determination I indicated that the parties could anticipate the Authority would determine costs, if asked to do so, on its usual “daily tariff” for a one-day investigation meeting unless circumstances or factors, require an adjustment upwards or downwards. I consider the appropriate starting point to be a single day, the tariff being \$4,500.

[9] As noted in the substantive determination, the primary reason for the adjournment was that there was a significant change in the claims made, albeit that there were additional reasons. I do not consider the adjournment itself is a matter that is attributable to the respondents or that forms a proper basis on which an uplift should be made. Additionally, I am not satisfied that the adjournment or any associated conduct actually caused any increase to the costs reasonably incurred.

[10] Further, I am not satisfied that the provision of written submissions is a sufficient basis on which to award an uplift to the daily tariff, particularly having regard to the nature of the matter, the change in claims, and the relatively discrete basis on which the application was determined.

[11] I am also not satisfied that there is any basis on which the respondents should be awarded a contribution towards their costs. They were unsuccessful in their defence of the primary claim made and additionally were unsuccessful in relation to claims made against Mr Satija.

Order

[12] I order Otto Azucena, Epiphany Donuts Newtown Limited, and Epiphany Donuts Waikanae Limited to pay Vishal Satija, within 28 days, the total sum of \$4,500.00 as a contribution towards the costs he incurred in pursuing his claims.

Rowan Anderson
Member of the Employment Relations Authority