

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 747  
3264979

BETWEEN	RYO WATANABE Applicant
AND	GO GREEN AUTOS NEW ZEALAND LIMITED First Respondent
AND	GREEN FIELD LIMITED Second Respondent
AND	TETSUO (TERRY) NOZAWA Third Respondent
AND	HAYATA UCHIDA Fourth Respondent

Member of Authority: Nicola Craig

Representatives: Ben Anderson, counsel for the applicant  
Tetsuo (Terry) Nozawa representing himself and for the  
first respondent  
Hayata Uchida representing himself and for the second  
respondent

Submissions received: 14 November 2024 from the applicant  
Nothing received from the first, second, third or fourth  
respondents

Determination: 16 December 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Ryo Watanabe is a Japanese national who worked in New Zealand from early January 2023 as a mechanic in a workshop operated by Go Green Autos New Zealand Limited (Go Green).

[2] A complex set of employment relationship problems arose including about whether Mr Watanabe was employed by Go Green and/or Green Field Limited (Green Field), a Japanese registered company connected with Mr Watanabe's move to this country.

### **Two determinations**

[3] In late 2023 Mr Watanabe applied for interim reinstatement with Go Green Autos. The Authority issued a determination (the first determination) reinstating Mr Watanabe on an interim basis to employment on the payroll of Go Green Autos.<sup>1</sup>

[4] The Authority proceeded to investigate Mr Watanabe's substantive claims. At the investigation meeting Hayata Uchida representing Green Field was involved. Both Mr Uchida and Tetsuo (Terry) Nozawa, director of Go Green, were joined with their agreement as additional parties to the proceeding. This related to an application in an amended statement of problem that they were held liable under s 142Y of the Employment Relations Act 2000 (the Act) as persons involved in breaches of employment standards.

[5] A second determination was issued.<sup>2</sup> The Authority found:

- Green Field employed Mr Watanabe from the time he began work in January 2023
- As of 27 June 2023, Mr Watanabe's employment relationship with Go Green commenced although only in the sense that he was a person intending to work
- Mr Watanabe's relationship was then running with both companies as joint employers
- Mr Watanabe was dismissed by both companies on receipt of a lawyer's letter of 12 September 2023 and that dismissal was unjustified
- The companies were jointly and severally liable to pay \$62,879.20 gross in lost wages (plus holiday pay), compensation of \$30,000.00 for non-

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<sup>1</sup> *Watanabe v Go Green Autos New Zealand Ltd and Green Field Ltd* [2024] NZERA 52.

<sup>2</sup> *Watanabe v Go Green Autos New Zealand Ltd, Green Field Ltd, Nozawa and Uchida* [2024] NZERA 627.

economic loss and \$22,648.75 for reimbursement of immigration related expenses

- Green Field was also liable to pay \$1,170.68 holiday pay, \$859.66 public holiday pay and \$1,155.00 for accommodation
- Mr Uchida was a person involved in breaches by Green Field and may be pursued if amounts are not paid by that company.

[6] Mr Watanabe's representative had properly informed the Authority and parties that he was on legal aid.

[7] Costs were reserved in both determinations. In the second, the parties were encouraged to resolve any issue of costs between themselves. They have not done so and Mr Watanabe applies for costs. A memorandum with attachments was received on Mr Watanabe's behalf, seeking costs. Nothing was received from any of the respondents about costs.

### **Submissions for Mr Watanabe**

[8] Mr Watanabe incurred a total of \$41,082.77 (including disbursements and GST) in legal fees between July 2023 and May 2024. Invoices and receipts are provided.

[9] Mr Watanabe seeks \$20,541.39 towards his legal costs being the three day tariff and an uplift of \$9,041.39. A *Calderbank* "without prejudice, save as to costs" offer was made on 28 May 2024.

[10] Disbursements of \$515.37 are sought – the Authority's filing fee, service costs, a special direction fee paid to Immigration New Zealand, along with costs to get document bundles to the Authority and travel to attend the investigation meeting.

### **Costs analysis**

[11] The Authority has the power to award costs.<sup>3</sup> This power is discretionary and is to be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* the principles guiding the Authority's approach to costs are described as including:

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<sup>3</sup> Employment Relations Act 2000, Schedule 2, cl 15.

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction
- Equity and good conscience is to be considered on a case by case basis
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award
- Costs generally follow the event
- Awards will be modest
- Frequently costs are based on a notional daily tariff.<sup>4</sup>

#### *Fees incurred*

[12] The fees covered in the submissions on Mr Watanabe's behalf start some time before this litigation began. There was no application for special damages relating to earlier legal fees. I am satisfied that over \$34,000 in legal fees (incl GST) were incurred in the period from when preparation for the interim reinstatement application began. Some discount for immigration related advice already been covered by the grievance remedy is appropriate.

#### *Tariff*

[13] Looking first at the Authority's daily tariff rate for this matter. The investigation meeting was held over three days. Allowing the daily tariff rate of \$4,500 for the first day and \$3,500 for subsequent days, a starting total of \$11,500 is established.

[14] An additional amount should be added for the interim reinstatement application process where Mr Watanabe was successful in obtaining an order of reinstatement to the payroll. Although no investigation meeting was held, a substantial amount of work was undertaken on Mr Watanabe's behalf, with the provision of detailed affidavits, documentation and submissions, along with attendance at a case management conference.

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<sup>4</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

[15] An additional \$3,500 is allowed for the interim reinstatement process, meaning the total reaches \$15,000.

*Other considerations*

[16] Are there any factors justifying an increase or decrease from there?

[17] The *Calderbank* offer was made a few days after completion of the investigation meeting. It offered to settle the claim for approximately \$88,000. I accept that that was considerably lower than the total award. However, it was made in the period after the hearing was held with Mr Watanabe's closing submissions heard there, but before the respondents' submissions were provided in writing. It is hard to see how acceptance of the offer could have had anything more than a minor impact on the costs Mr Watanabe incurred. No adjustment is made.

[18] I have considered whether the two companies should have different costs awards imposed on them. But their obligations were intertwined and both were found jointly liable for unjustifiably dismissing Mr Watanabe and the remedies. Green Field's separate liability for comparatively modest amounts of arrears of wages and other money owing is not sufficient to upset joint liability for costs.

[19] No costs order is specifically sought regarding Mr Nozawa and Mr Uchida.

**Disbursements**

[20] Mr Watanabe's representatives were required to serve documents on Green Field in Japan and he is entitled to be reimbursed for that cost – total \$128.51.

[21] The cost of getting document bundles to the Authority is also to be reimbursed - \$9.72 .

[22] Mr Watanabe is also entitled to be reimbursed for the Authority's filing fee – \$71.55.

[23] It is not usual to reimburse parties', or their representatives', travel costs to the hearing, other than in exceptional circumstances. Nothing of that nature has been identified here.

[24] The application fee payment made to Immigration New Zealand is referred to as relating to a special direction. Mr Watanabe already has an order covering

immigration costs resulting from his dismissal.<sup>5</sup> In the absence of elucidation about the connection with costs incurred as part of the litigation, no order is made.

### **Orders**

[25] Go Green Autos New Zealand Ltd and Green Field Ltd are jointly and severally liable to pay Ryo Watanabe the following sums within 28 days of the date of this determination:

- \$15,000.00 as a contribution to his costs; and
- \$209.78 for disbursements.

Nicola Craig

Member of the Employment Relations Authority

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<sup>5</sup> Above, at n 2, at [200] [201] and [214].