

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 81
3195159

BETWEEN ANANT SHARMA
Applicant

AND RODNEY FARM 'N'
MACHINERY LIMITED
Respondent

Member of Authority: Jeremy Lynch

Representatives: Applicant in person
Jim Hogg for the Respondent

Investigation Meeting: On the papers

Submissions and further evidence received: 8, 17, 18, and 25 January 2024 from the Applicant
15 January 2024 from the Respondent

Date of Determination: 13 February 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination on 19 December 2023, which found Mr Sharma had been unjustifiably disadvantaged in his employment, and made an award of compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).¹ Orders were also made for arrears of wages, arrears of ACC first week compensation, KiwiSaver compulsory contributions, and an amount equivalent to the member tax credit that would have been applied to Mr Sharma's KiwiSaver Scheme, but for Rodney Farm 'N' Machinery Limited's (Rodney Farm) breach of the provisions of the KiwiSaver Act 2006.

¹ *Anant Sharma v Rodney Farm 'N' Machinery Limited* [2023] NZERA765.

[2] As set out at paragraphs [214] and [215] of the Authority's substantive determination, as the parties were both self-represented, the Authority's preliminary view is that costs should lie where they fall.

Mr Sharma's claim for costs

[3] Mr Sharma seeks to be reimbursed for the cost of disbursements he says are reasonable and related to the Authority's substantive investigation.

[4] Mr Sharma seeks to be compensated for the wages he lost as a result of attending mediation, as well as the Authority's investigation meeting. He also seeks to be reimbursed for wages he says he lost as a result of attending a conference at the Disputes Tribunal.

[5] Mr Sharma also seeks to be reimbursed for the cost of parking, together with a 200 kilometre mileage claim.

[6] In addition, Mr Sharma seeks to be reimbursed \$250.00 for the cost of "photocopying, document printing, photo printing, and typing".

Rodney Farm's response

[7] Rodney Farm agrees with the approach set out in the Authority's substantive determination, that costs should lie where they fall.

Costs and principles

[8] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscious jurisdiction;
- Equity and good conscience are 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 judged against a notional daily tariff.

Cost analysis

[9] Mr Sharma was the successful party in the substantive matter, however, as he was self-represented, he has not incurred representation costs in this matter.

[10] The Authority can award disbursement costs, if it is satisfied that they are reasonable, and reimbursement is appropriate in the circumstances.

[11] Mr Sharma seeks to be awarded reimbursement of the wages he says he lost (from his employment with his new employer) as a result of attending mediation and the Authority's investigation meeting, together with a conference before the Disputes Tribunal.

[12] The Authority does not award payment of the wages lost as a result of a party's attendance at mediation and/or an investigation meeting. The proceeding before the Authority was commenced by Mr Sharma, and a necessary part of being the applicant in such a proceeding, is attending the investigation meeting. I decline to award Mr Sharma's lost wages for his attendance at mediation and the Authority's investigation.

[13] The Authority cannot award costs in relation to proceedings before other tribunals. The Authority has no jurisdiction to award Mr Sharma's lost wages for his attendance at a conference before the Disputes Tribunal.

[14] The Authority's investigation meeting was two days in duration. However, Mr Sharma seeks to be reimbursed for parking charges for three days. No receipts have been provided in support of this claim, and it is not clear why Mr Sharma is seeking reimbursement of three days' parking when the Authority's investigation ran for only two days.

[15] Similarly, Mr Sharma seeks reimbursement of his mileage costs for three days' travel. The Authority does not usually award travel costs for a party to a proceeding. Mr Sharma did not provide any reason as to why the Authority should depart from its usual practice and award him parking and travel costs.

[16] There is no basis for the Authority to make such an award, and I decline to exercise my discretion to make such an award.

[17] In correspondence with the Authority regarding his claim for costs, Mr Sharma indicated he also wished to recover his medical expenses from Rodney Farm. It is not clear what medical expenses Mr Sharma incurred during the two-day investigation meeting. Mr Sharma did not seek recovery of any particular amount, he merely advised that "I forgot my medical bills to add for reimbursement as well." No explanation or supporting information was provided. There is not sufficient information before the Authority for this claim to be considered. I decline to make an award for medical expenses.

[18] Mr Sharma also seeks to be reimbursed the sum of \$250.00 which he says is for printing and typing costs.

[19] The Authority does frequently award reimbursement of such expenses.

[20] No common bundle of documents was required for this matter, and Mr Sharma declined to provide a witness statement. This is relevant to Mr Sharma's claim for printing costs.

[21] Despite many requests by the Authority that Mr Sharma provide more detail in support of this claim, together with any receipts he may have been issued, he declined to do so. He advised the Authority that as he was challenging the Authority's substantive determination, he would not be providing any receipts to support his claim for disbursements.

[22] Secretarial costs such as typing, are the type of expense the Authority can allow as a disbursement. However, a portion of Mr Sharma's statement of problem was handwritten. As such it was not clear which parts (if any) he had had professionally typed, or what secretarial expenses Mr Sharma had incurred. Despite being asked to provide evidence to support his claim, Mr Sharma was unable to provide any basis for his claim for typing expenses. Accordingly, I decline to exercise my discretion to make any such order.

[23] However, as the successful party, it is reasonable that Mr Sharma is reimbursed for the cost of the filing fee he paid to commence his proceeding before the Authority. Rodney Farm is to reimburse Mr Sharma the cost of the filing fee, being \$71.56.

Outcome

[24] Within 28 days of today's date, Rodney Farm 'N' Machinery Limited is ordered to pay Anant Sharma \$71.56, being the cost of the filing fee incurred in relation to this matter.

Jeremy Lynch
Member of the Employment Relations Authority