

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 144  
3200679

BETWEEN	SEKHENDRA NAIR Applicant
AND	MODERN AUTO REPAIR CENTRE LIMITED First Respondent
AND	SATYA NAND SHARMA Second Respondent

Member of Authority:	Peter Fuiava
Representatives:	Robert Morgan, advocate for the Applicant Aaron Kashyap, counsel for the Respondents
Submissions received:	7 February 2025 for the Applicant No submissions from the Respondents
Determination:	7 March 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination dated 21 January 2025, I found that Sekhendra Nair was owed wages and annual leave arrears by Modern Auto Repair Centre Limited (MARC or the company).<sup>1</sup> Consequently, the company was ordered to make good those arrears plus interest and payment of lost wages and hurt and humiliation compensation for unjustified dismissal. To the extent that MARC was unable to pay the wages it owed to Mr Nair, its shareholder and company director, Satya Sharma, was declared a person involved in a breach of employment standards under ss 142Y and 142W of the Employment Relations Act 2000 (the Act).

**How has the Authority proceeded?**

[2] The question of costs was reserved and if the parties were not able to reach their own agreement, memoranda were to be lodged with the Authority. Mr Nair's written

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<sup>1</sup> *Nair v Modern Auto Repair Centre Limited & Sharma* [2025] NZERA 28.

costs submission was filed on 7 February 2025. On 10 and 25 February 2025, the Authority emailed the respondents' counsel, Mr Kashyap, a reminder but no submissions in reply were provided. This determination brings finality to the last remaining issue to my investigation which concerns the question of costs.

### **What is being sought?**

[3] Mr Nair's representative, Mr Morgan, seeks a starting point of \$5,000 in costs on the basis of the daily tariff for the first day of an investigation meeting of \$4,500 with an upwards adjustment to reflect that the total time spent on investigating matters took slightly more than one day in total. While Mr Morgan also sought reimbursement of the filing fee, provision for that expense was made in the original determination at [41](v) and will not be ordered a second time.

### **What is the Authority's approach to costs?**

[4] The Authority has the power under clause 15 of Schedule 2 of the Act to award costs. However, the discretion to order costs must be exercised in accordance with principle. For transparency, the Authority's approach to costs is available to the public on its website,<sup>2</sup> as well as its Practice Direction.<sup>3</sup> Buttressing its approach to costs is the Employment Court's decision in *PBO v Da Cruz* in which it was observed that, since the Authority's inception, it has held onto some basic tenets regarding costs including:<sup>4</sup>

- costs generally follow the event (i.e. the unsuccessful party will normally be required to contribute to the costs of the successful party);  
and
- that awards will be modest.

### **What is the approach to be taken here?**

[5] The investigation meeting was heard intermittently over four non-consecutive days. The first day of hearing started at 10 am on 24 January 2024 but was unfortunately adjourned because the Fiji-Hindi interpreter engaged by the Authority did not appear. While an attempt was made to salvage matters by having Mr Nair's wife interpret instead, this was not ideal and the meeting ended at 11.35 am.

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<sup>2</sup> [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).

<sup>3</sup> [www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf](http://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf).

<sup>4</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 at [44].

[6] The investigation meeting resumed on 14 March 2024 but there was no appearance by Mr Satya who was not available owing to a staff member being away from work on sick leave. While the investigation proceeded in his absence, with Mr Kashyap representing the respondents' interests, the investigation meeting could not be completed and ended at approximately 1.30 pm after Mr Nair and his wife had given their evidence.

[7] The resumption of the investigation meeting was delayed due to Mr Morgan's unavailability for health reasons. Matters eventually resumed on 13 August 2024 with the investigation meeting lasting some two-and-a-half hours in order to complete Mr Satya's evidence.

[8] On 21 October 2024, the representatives made oral closing submissions via audio-visual link which lasted approximately 40 minutes.

### **Outcome**

[9] Discounting the investigation meeting that was held on 24 January 2024 which could not proceed through no fault of either party, the total time spent on investigating this employment problem was closer to one full day for which the notional tariff is \$4,500.

[10] As Mr Nair was the successful party and as there is no basis to make either an upwards or downwards adjustment to the daily notional tariff, the Authority makes orders against **Modern Auto Repair Centre Limited and Satya Nand Sharma to pay costs of \$4,500 either jointly or severally to Mr Nair no later than Friday 28 March 2025.**

Peter Fuiava  
Member of the Employment Relations Authority