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Arkompat v Thai Chilli Co Limited (Auckland) [2011] NZERA 453; [2011] NZERA Auckland 295 (8 July 2011)

Last Updated: 3 August 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 295 5276495

BETWEEN

PRASERT ARKOMPAT Applicant

AND

THAI CHILLI CO LIMITED Respondent

Member of Authority: Submissions received:

Alastair Dumbleton

8 and 29 March 2011

Determination:

8 July 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] Following a two day investigation meeting the Authority in a Determination dated 24 February 2011 ([2011] NZERA Auckland 72) found that it did not have jurisdiction to investigate and determine Mr Prasert Arkompat's unjustified dismissal personal grievance. This was because Mr Arkompat had not raised a grievance within 90 days of his employment terminating and had not obtained leave under [s 114\(4\)](#) of the [Employment Relations Act 2000](#) for a grievance to be raised outside of that period.

[2] The Authority also found that it was too late and a misuse of the investigation process to apply for leave under [s 114](#) in closing submissions made at the end of the investigation.

[3] The Authority further found that a claim by Mr Arkompat to recover arrears of wages and holiday pay had not been established on the evidence.

[4] The question of costs was reserved for application to be made within a fixed time frame.

[5] On behalf of Thai Chilli Co an application has been made for full solicitor client costs, or indemnity costs, of \$24,000 against Mr Arkompat.

[6] Mr Arkompat's response is that costs should lie where they fall and that he has insufficient means to pay an award of costs at any level. He did not receive of legal aid for the case.

[7] Although some of the factual circumstances in this case were unusual and required information to be sought from outside New Zealand, I do not consider there are features of the case that justify an award of full solicitor client costs. However I do find that a reasonable contribution to costs should be awarded and at a level above the "daily rate" counsel Mr Gallagher for the respondent company referred to in his submissions.

[8] The ability or otherwise of Mr Arkompat to meet any award of costs in my view should be left as an enforcement matter,

just as the question of the payment of outstanding fines by him to the District Court apparently was. Mr Arkompat submitted to that Court a Statement of Means and offered to repay his outstanding fines at \$20 per week.

[9] I am largely in agreement with the submissions of Mr Gallagher and I consider that the Authority's discretion to award costs should be exercised in this case by ordering Mr Arkompat to pay Thai Chilli Co Ltd costs of \$8,250. This higher than normal "daily rate" will reflect the unusual circumstances investigated by the Authority and the work that the company was put to, unnecessarily, in fully participating in the investigation. The order for costs is made pursuant to clause 15 of Schedule 2 of the [Employment Relations Act 2000](#).

A Dumbleton

Member of the Employment Relations Authority

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