

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Rahul Bagchi (Applicant)
AND Inland Revenue Department (Respondent)
REPRESENTATIVES Rahul Bagchi In person
Peter Churchman, for Respondent
MEMBER OF AUTHORITY Janet Scott
INVESTIGATION MEETING 15 July 2004
DATE OF DETERMINATION 28 June 2005

COSTS DETERMINATION OF THE AUTHORITY

The applicant brought a personal grievance claim alleging he had been unjustifiably dismissed. The applicant was unsuccessful in that claim.

The respondent submits it has incurred significant expense in defending this matter (\$33,254.05) and seeks an award of costs. The sum sought is \$15,000.

The power to award costs is contained in the Second Schedule of the Employment Relations Act 2000. The general principles to be applied in cost applications are set out, in case law including *NZALPA v Registrar of Unions* (1989) NZILR,550, *Okeby v Computer Associates (NZ) Limited* [1994] 1 ERNZ 613 and *Reid v New Zealand Fire Service Commission* [1995] 2 ERNZ 38. The criteria to be taken into account include the importance of the case to the parties, the way the case was conducted, the conduct of the parties at the hearing, the amount of time required for effective preparation over and above that which would ordinarily be inferred, whether arguments lacking in substance were advanced or whether unduly legalistic and technical points were taken and the actual costs incurred.

Discussion

I have read and weighed the submissions of the parties in this matter.

This is an extremely difficult case in which to deliver a costs award that makes any sense in light of the number and seriousness of the allegations - largely without merit - made by Mr Bagchi in prosecuting his claim and the time necessarily taken to assess those allegations and to prepare a cogent defence with supporting documentation.

A strict application of the general and discretionary principles relevant to setting an award of costs would require a generous award to the respondent – who has made a realistic claim in all the circumstances.

On the other hand I accept that Mr Bagchi is, in all probability, in impecunious circumstances and unable to pay anything more than a nominal award of costs against him.

In all the circumstances of this case I am adopting the general practice of this Authority that average awards of costs fall between \$1000 and \$3000 per day. It has also been held that generally awards of costs are modest consistent with the Authority's approach to Investigations (see *Wilson and Grey Power Publishing Co. Ltd* unreported AA58/0; *Beardsley and Campac International Limited* AA 39A/01).

Determination

The Investigation Meeting in this matter occupied three days. I am setting \$2000 per day as a reasonable contribution by Mr Bagchi to the respondent's costs in this matter.

I therefore direct Mr Bagchi to pay to the respondent the sum of \$6000 as a contribution to its costs.

Janet Scott
Member of Employment Relations Authority