



New Zealand Employment Relations Authority Decisions

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Dalhami v Medina Trading (Auckland) [2018] NZERA 286; [2018] NZERA Auckland 286 (12 September 2018)

Last Updated: 19 September 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 286
3022714

BETWEEN NUSAIBA ALI ABDULLAH AL DALHAMI

Applicant

A N D MEDINA TRADING Respondent

Member of Authority: Jenni-Maree Trotman

Representatives: Ronald Jones, Advocate for Applicant

Respondent in person

Submissions received: 13 August 2018 from Respondent

4 September 2018 and 10 September 2018 from Applicant

Date of Determination: 12 September 2018

COST DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

A. The Applicant is ordered to pay to the Respondent a sum of \$4,500

towards the Applicant's legal costs;

B. Payment of the sum of \$4,500 is to be paid within 28 days of the date of this determination.

Employment Relationship Problem

[1] On 31 July 2018, I issued a determination in which I found Nusaiba Ali Abdullah Al-Dalhami did not suffer a disadvantage to her conditions of employment with Medina Trading Limited (Medina). I also found Medina did not constructively dismiss Ms Al-Dalhami.

[2] Costs were reserved, with the parties encouraged to resolve that issue themselves. In the event that they could not, I set a timetable for submissions.

[3] On 13 August 2018, I was advised by Medina's representative that the parties had been unable to resolve costs. Medina accordingly applied for costs. By emails dated 4 September and 10 September 2018 Ms Al-Dalhami opposed costs being awarded in the sum claimed by Medina.

Application for costs

[4] Medina claims costs in the sum of \$11,101.95. This sum is made up of:

a) A sum of \$6,303.20 representing the legal costs Medina had incurred; and b) A sum of \$4,798.75 representing expenses

Medina had incurred through management time.

Authority's Approach to Costs

[5] The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority considers reasonable.¹ The principles applying to costs are well settled and do not require repeating.²

[6] Recently in *Booth v Big Kahuna Holdings Limited*³ Judge Inglis wrote:

Parties are entitled to adopt a belts-and-braces approach to litigation, and may retain the services of legal counsel of their choosing. That is not, however, a choice that can automatically be visited on the unsuccessful party. The point is particular apposite in the Authority, which is statutorily designed to be an investigative, non-technical, low level, and readily accessible forum. That suggests two things. First, that the legal costs of preparing for and attending at an investigation meeting should be modest. Second, imposing a substantial costs burden on unsuccessful litigants almost inevitably gives rise to access to justice issues ...

[7] An assessment of costs will normally start with the notional daily tariff. The

Authority's normal daily tariff is \$4,500.00 for the first day of an investigation

¹ [Employment Relations Act 2000](#), Schedule 2 clause 14.

² *PBO Ltd v Da Cruz* [2005] NZEmpC 144; [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].

³ [2015] NZEmpC

meeting.⁴ The tariff is then adjusted upwards or downwards depending on the particular circumstances of the case.

Should the daily tariff be adjusted?

[8] The investigation meeting took place over 1 day. Using the normal daily tariff the starting point for an award of costs is \$4,500.

Upward?

[9] Ms Al-Dalhami has not acted in a manner that justifies an increase in the daily tariff or indemnity costs. I am aware of no conduct on her part that unnecessarily increased Medina's costs or required work outside of the normal course required and taken into account by the Authority in setting its daily tariff. There were no delays in progression of the investigation, no misconduct on the part of Ms Al-Dalhami and I am not aware of any Calderbank offer.

[10] I do not accept that the time spent by Medina's employees warrants any uplift to the daily tariff. All attendances undertaken by Medina's employees, and its former solicitors, were within the normal range of attendances that are taken into account when the daily tariff was set by the Authority.

Downwards?

[11] I am satisfied that the daily tariff should not be adjusted downwards. The time records provided by Medina's former solicitors show legal fees incurred by Medina that exceed the daily tariff. These costs, on balance, appear to have been reasonably incurred.

Determination

[12] Ms Al-Dalhami is ordered to pay to Medina the sum of \$4,500 towards its legal costs. This sum must be paid within 28 days of the date of this determination.

Jenni-Maree Trotman

Member of the Employment Relations Authority

⁴ Practice Note 2, Costs in the Employment Relations Authority