

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 31
5433831

BETWEEN

NARY GUNSON
Applicant

A N D

GASTRONOMIC VENTURES
LIMITED
Respondent

Member of Authority: James Crichton

Representatives: M Gunson, Advocate for the Applicant
M. J-P Huang, Advocate for the Respondent

Submissions Received: 6 October 2014 from the Applicant
10 October 2014 from the Respondent

Date of Determination: 30 January 2015

COSTS DETERMINATION OF THE AUTHORITY

The substantive decision

[1] By determination dated 10 September 2014, and issued as [2014] NZERA Auckland 377, the Chief of the Authority, Member Monaghan decided that the applicant (Ms Gunson) was owed holiday pay by the respondent (Gastronomic Ventures), and that Gastronomic Ventures should pay interest on that sum calculated at 5% per annum from the date of the termination of Ms Gunson's employment down to the date of payment.

[2] Costs were reserved.

[3] There has now been an extensive delay in the Authority addressing the question of costs in this matter and that delay is regretted. Ms Monaghan has been unwell since shortly after the issue of the substantive decision and accordingly, I have picked up the matter and dealt with it.

The claim for costs

[4] Ms Gunson seeks the sum of \$224.89 as a contribution to her costs. That amount is made up exclusively of disbursements being the Authority's filing fee of \$71.56 together with the costs of the extra hearing time necessary to complete the matter. That extra hearing time cost amounts to a total of \$153.33. The sum of those two amounts is represented by the total figure sought of \$224.89.

The response

[5] Gastronomic Ventures complains about the timeliness with which it was notified of Ms Gunson's claim for costs and considers that the items claimed for represent nominal fees only and ought to be borne by the applicant.

Discussion

[6] The law on costs fixing in the Authority is well settled and need not be recited again here. Two central principles governing the application of costs in the Authority are that costs usually follow the event (in other words, the successful party can look to the unsuccessful party for a contribution to their costs) and costs in the Authority are typically modest.

[7] Here, it is apparent that Ms Gunson was substantially successful in her claim although the Authority did not grant her all of the monetary sums she sought. Nonetheless, I am satisfied that Ms Gunson can properly be regarded as having been the successful party and is therefore entitled to a contribution to her costs from the unsuccessful party.

[8] Moreover, Ms Gunson's claim for costs is very modest indeed, being essentially only the disbursements she incurred in progressing her successful claim.

[9] I am satisfied then that Ms Gunson should receive payment of the disbursements that she seeks; holiday pay is a statutory entitlement of workers and the fact is that Ms Gunson had to undertake legal proceedings in the Authority in order to obtain the holiday pay that she was entitled to as of right and in consequence it is just that Gastronomic Ventures pays the sums claimed.

Other matters

[10] Two other matters deserve some comment from me. The first is a contention made by both parties that in para.[13] of the substantive determination, the presiding Member was mistaken in an observation she made. The observation was to the effect that Ms Gunson acknowledged in her evidence to the Authority that another witness had been tearing out pages from a book recording Ms Gunson's hours of work.

[11] Only the presiding Member can issue an erratum in respect to an error on the face of a determination. Member Monaghan remains unwell and I do not think there is any need to trouble her with attending to this matter.

[12] This is because nothing turns on this question. It is not central to any of the findings of fact that she made and bears not at all on the conclusions that she reached.

[13] All that I can do in her stead is advise the parties that I note their common view that Ms Gunson did not say what the Authority recorded her as having said.

[14] The other matter that I ought to comment on is an apparent dispute between the two directors of Gastronomic Ventures concerning the payment to Ms Gunson of the sums awarded to her by the Authority in its substantive determination. By email dated 8 October 2014 copied to the Authority, one of the directors, Mr Huang, forwarded an instruction to a law firm to make payment of both the holiday pay and the interest on that sum calculated to the day in question. The email was copied to Mr Huang's co-director, Mr Stuart.

[15] Then, there appears to have been a request from Mr Stuart for information pertaining to the Authority's right to award interest on the holiday pay because by email dated 9 October 2014, an Authority support officer forwarded the relevant sections of the two statutes which give authority for the Authority to award costs.

[16] There is then copied email traffic from Mr Huang to Mr Stuart urging him to agree to the payment of the judgment sum and the interest on it and pointing out that interest accrues on a daily basis and therefore the cost to the employer increases on a daily basis.

[17] Those requests from Mr Huang to Mr Stuart for the authorising of the payment of the judgment sum are then repeated twice over and the Authority has those emails on its file.

[18] I am not clear from the file whether those payments of the judgment sum have now been made or not, but I assume no payment has yet been made because of an email the Authority has received from Mr Huang dated 29 January 2015.

[19] The Authority file also discloses that Mr Huang quite properly sought advice from the Authority's registry about what happened if the judgment sum was not paid and that information was promptly provided to him on 15 October 2014.

[20] The information from the Authority on the non-payment of a judgment sum does not, of course, deal with relationships between directors; that is a matter within the aegis of the company itself. However, where the Authority has made an order that has not been complied with, there are legal consequences and a party seeking to obtain satisfaction of a judgment sum has various avenues available to it.

[21] I can only hope that the judgment sum will now be paid and that Gastronomic Ventures will now give priority to getting this costs award paid as well.

Determination

[22] I direct that Gastronomic Ventures Limited is to pay to Ms Gunson the sum of \$224.89.

[23] In case it assists Ms Gunson to obtain payment of the two judgement debts now owed (assuming as I do that the Authority's first determination remains unsatisfied), I direct the Authority officer to provide two separate Certificates of Determination in respect to the sums now owed to her in relation to the two determinations of the Authority.

James Crichton
Member of the Employment Relations Authority