

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 361
3013272

BETWEEN SATISH KUMAR KALERA
Applicant

AND SIMPLY SECURITY
LIMITED
Respondent

Member of Authority: Jenni-Maree Trotman

Representatives: Applicant in person
Geoff O’Sullivan, Counsel for Respondent

Investigation Meeting: On the papers

Submissions received: 10 November 2017 from Applicant
16 November 2017 from Respondent

Determination: 21 November 2017

PRELIMINARY DETERMINATION OF THE AUTHORITY

Orders

A. The application for security for costs is dismissed.

Employment Relationship Problem

[1] Satish Kumar Kalera has applied to the Authority for the recovery of deductions made by Simply Security Limited from his wages. He alleges the deductions were made without his consent and breached the provisions of the Wages Protection Act 1983. He claims recovery of the deductions which total \$1,773.67.

[2] Simply Security denies that the deductions made from Mr Kalera’s wages were unlawful. Further, it claims Mr Kalera breached the individual employment agreement by failing to comply with Simply Security’s vehicle policy. In particular by failing to pay a sum of \$307.83 being the amount outstanding for vehicle repairs.

It seeks recovery of this sum together with a penalty. Mr Kalera denies that he has breached the individual employment agreement.

[3] The dispute between the parties is to be dealt with on the papers. In the meantime Simply Security has applied for an order for security for costs in respect of this matter. Neither the sum sought by Simply Security nor the details as to how this sum is to be held, forms part of Simply Security's application.

[4] The grounds upon which Simply Security applies for security for costs are:

- a) Mr Kalera is leaving New Zealand for at least six months;
- b) Any determination by the Authority will be rendered nugatory by Mr Kalera remaining outside the jurisdiction within which orders can be enforced;
- c) There will be costs and difficulties to Simply Security in enforcing any substantive and/or costs determination;
- d) Mr Kalera's claim has little prospect of success.

[5] Mr Kalera was provided with an opportunity to respond to Simply Security's application for security for costs. In opposition to Simply Security's application he submits, in summary:

- a) He will return to New Zealand in or after April 2018. He holds a permanent residency visa and has a young daughter who is a student in New Zealand;
- b) He has provided an address for service in India;
- c) He has a reasonably arguable case.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded all the evidence and submissions received from Mr Kalera and Simply Security but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

Issues

[7] The issues to be determined are:

- (a) Does the Authority have jurisdiction to order security for costs?
- (b) Should security for costs be ordered in the circumstances of this case?

Issue One: Does the Authority have jurisdiction to order security for costs?

[8] The power to award costs in the Authority is contained in clause 15, schedule 2, of the Act. This power allows the Authority to order any party to pay to any other party costs and expenses. However, it does not expressly allow the Authority to order security for payment of costs.

[9] In *Milne v Air New Zealand*¹ and subsequently in *South Pacific Limited v Tian*² Judge Inglis held:

[4] There is no express provision in the Employment Relations Act 2000 (“the Act”) to order security of costs. However, it has been accepted in numerous cases that **the Employment Court has the power** to make such an order and to stay any proceedings until security is given. (Emphasis added)

[10] Judge Inglis’ conclusion mirrored that of the Employment Court in *Reid v NZ Fire Service Commission*³ where the Court held:

A power to order security of costs is not only unnecessary but contrary to the core function of the tribunal to provide speedy, fair and just resolution of differences.

[11] In the absence of express provisions in the Act I determine that the Authority has no jurisdiction to order security of costs.

Issue two: Should security for costs be ordered in the circumstances of this case?

[12] In light of my findings on jurisdiction there is no need to consider this issue.

[13] The application for security of costs is dismissed. Costs are reserved pending the final resolution of the matter.

Jenni-Maree Trotman
Member of the Employment Relations Authority

¹ [2013] NZEmpC 108.

² [2013] NZEmpC 214 at [4].

³ [1996] 1 ERNZ 228 at p.246.