

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 272  
3014531

BETWEEN                      SUKHPREET KAUR  
   Applicant  
  
A N D                              DIRECT AUTO IMPORTERS  
   (NZ) LIMITED  
   Respondent

Member of Authority:        Anna Fitzgibbon  
  
Representatives:              Arunjeev Singh, Counsel for the Applicant  
   Vishaal Kumar-Sharma, Director of the Respondent  
  
Submissions Received:        1 September 2017 from the Applicant  
  
Date of Determination:        12 September 2017

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**COSTS DETERMINATION OF THE  
EMPLOYMENT RELATIONS AUTHORITY**

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- A.     Direct Auto Importers (NZ) Limited (DAIL) is ordered to contribute \$500.00 towards the costs of Ms Sukhpreet Kaur and to reimburse the filing fee of \$71.56, both within 14 days of the date of this determination.**

**The substantive determination**

[1]     In a substantive determination of the Authority, issued on 25 August 2017<sup>1</sup>, the Authority determined that:

- (a)     DAIL had failed to comply with record of settlement (the settlement) dated 29 March 2017, signed under s.149 of the Employment Relations Act (2000) and was ordered to comply with the settlement and pay

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<sup>1</sup>            [2017] NZERA Auckland 251

Ms Kaur the entire amount of moneys owing under the settlement, totalling \$16,500 within 21 days of the date of the determination.

- (b) Costs were reserved. Ms Kaur was given 14 days in which to provide the Authority with details of costs in relation to this matter.

### **Costs Determination**

[2] On 1 September 2017, Mr Singh filed a memorandum seeking costs on behalf of the Applicant, Ms Kaur. DAIL was provided with a copy of the memorandum as to costs and filed a response on 6 September.

[3] Ms Kaur seeks costs of \$2,000 including GST, plus \$71.56 including GST for disbursements.

### **The Authority's daily costs tariff**

[4] For matters filed in the Authority from 1 August 2016, the Authority's normal daily tariff increased from \$3,500 to \$4,500 for the first day of an investigation meeting. For each subsequent day of an investigation meeting the Authority's normal daily tariff remains at \$3,500<sup>2</sup>. The matter was filed in the Authority on 4 July 2017 and therefore the new costs regime applies.

### **The Authority's power to award costs**

[5] The Authority's power to award costs arises from Schedule 2, clause 15 of the Act. This confers a wide discretion on the Authority to award costs on a principled basis.

[6] The full Employment Court decision in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*<sup>3</sup> sets out the principles that apply to awards of costs in the Authority. The principles are so well established that there is no need for them to be repeated.

[7] The general principle is that costs follow the event, and there is no reason to depart from that principle in this case. Ms Kaur was successful in her claim and should be awarded costs. Mr Singh did not provide the Authority with any invoices in support of his application that costs be set at \$2,000, nor did he provide details of his

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<sup>2</sup> Practice Note 2, Costs in the Employment Relations Authority

<sup>3</sup> [2005] ERNZ 808, para 44

hourly rate. As Mr Sharma pointed out in his submissions in reply, this would amount to an hourly charge rate of \$500.

[8] Mr Singh filed a brief statement of problem in the Authority for Ms Kaur. DAIL did not file a statement in reply. Ms Kaur is living in India so the Investigation Meeting was held over the phone. No documents or witness statements were filed.

[9] The Employment in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers' Union & Ors*<sup>4</sup> observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. This approach has been affirmed by the Employment Court in *Fagotti v. Acme & Co.*<sup>5</sup>.

[10] The investigation meeting took less than an hour by phone.

[11] Based on the Authority's daily tariff, an hour would amount to \$562.50 based on an 8 hour day. Mr Sharma says a figure closer to \$500 than \$2000 should be awarded. I agree.

[12] I order costs of \$500 to be paid by DAIL to Ms Kaur within 14 days of the date of this determination.

[13] I order DAIL to reimburse Mr Kaur the cost of the filing fee of \$71.56 within 14 days of this determination.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**

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<sup>4</sup> [2011] NZEmpC 13

<sup>5</sup> [2015] NZEmpC 135