



New Zealand Employment Relations Authority Decisions

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Kazemi v Rightway Limited (Auckland) [2017] NZERA 331; [2017] NZERA Auckland 331 (20 October 2017)

Last Updated: 8 February 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 331
3010991

BETWEEN ELENA KAZEMI Applicant

A N D RIGHTWAY LIMITED First Respondent

A N D EDWIN FREDERICK SHAND READ

Second Respondent

AND GREGORY MICHAEL SHEEHAN

Third Respondent

A N D DARRYL DEVENDRA JHINKU Fourth Respondent

Member of Authority: Rachel Larmer

Representatives: Tony Drake, Counsel for Applicant

Gillian Service and Chris Baldock, Counsel for First, Second and Third Respondents

No appearance by Fourth Respondent

Investigation Meeting: On the papers

Submission s R e c e i v e d: 06 O c t o b e r 20 17 f r o m F i r s t, S e c o n d a n d T h i r d

Respondents

13 October 2017 from Applicant

Date of Determination: 20 October 2017

COSTS DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

Employment relationship problem

[1] Ms Kazemi's removal application was unsuccessful.' She has challenged that determination under proceeding EMPC 290/2017.

[2] Ms Kazemi's substantive proceedings is currently the subject of a stay determination issued which was also issued today.2

[3] The First, Second and Third Respondents as the successful parties in the removal proceedings are entitled to a

contribution towards their actual costs. The Fourth Respondent did not participate in the removal application so is not entitled to costs on the basis no costs were actually incurred.

[4] Ms Kazemi seeks that costs be put on hold pending the outcome of her challenge. The First Second and Third Respondents say they are not concerned about whether or not costs are directed to be paid now or at a later date after the challenge has been resolved but they say they want a costs order to preserve their position.

[5] The First Second and Third Respondents incurred actual legal costs in excess of \$7,500. They seek that Ms Kazemi makes a \$1,500 contribution towards their actual costs.

[6] I adopt the Authority's usual notional daily tariff based approach to costs. The notional starting tariff is currently \$4,500 for the first day of an investigation meeting.

[7] The removal application was dealt with on the papers. The \$1,500 sought by the First Second and Third Respondents represents two hours of time based on the notional daily tariff rate.

[8] Costs are discretionary. I consider the amount claimed is reasonable and appropriate and will do justice between the parties.

[9] Accordingly Ms Kazemi is ordered to pay the First Second and Third Respondents \$1,500 towards their legal costs.

1[2017] NZERA Auckland 300.

2 [2017] NZERA Auckland 331

[10] The payment of the costs awarded does not become due until 72 hours after the challenge to the removal determination has been resolved either by agreement of the parties or by the Employment Court.

[11] Ms Kazemi was awarded costs In accordance with [s.180](#) of the [Employment Relations Act 2000](#), the challenge does not operate as a stay unless the Court or Authority so orders.

[12] Mr Drake has applied for a stay of the Authority's proceedings pending the outcome of Ms Kazemi's challenge to the Authority's removal determination.

[13] The First, Second and Third Respondents are neutral regarding Ms Kazemi's stay application. The Fourth Respondent has not expressed any views.

[14] I order a stay of these Authority proceedings pending the outcome of Ms Kazemi's challenge. The parties are expected to diligently prosecute Ms Kazemi's challenge proceedings before the Employment Court.

Rachel Larmer

Member of the Employment Relations Authority