



# New Zealand Employment Relations Authority Decisions

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## **Kerai v Stevenson Engineering Limited [2011] NZERA 205; [2011] NZERA Auckland 161 (20 April 2011)**

Last Updated: 9 June 2011

**IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND**

[2011] NZERA Auckland 161 5160934

BETWEEN LAXMAN KERAI

Applicant

AND STEVENSON ENGINEERING

LIMITED

Respondent

Member of Authority: Yvonne Oldfield

Representatives: David Flaws for Applicant

Geoff White for Respondent

Submissions received: 14 April 2011 from Applicant

15 April 2011 from Respondent

Determination: 20 April 2011

### **COSTS DETERMINATION OF THE AUTHORITY**

[1] This employment relationship problem concerned claims of unjustified disadvantage and unjustified dismissal. In a determination dated 16 March 2011 it was recorded that one claim of disadvantage, along with the unjustified dismissal claim, had been made out. Remedies were however reduced by 30% for contributory conduct.

[2] Mr Kerai, as the successful party, now seeks a contribution to his costs in the sum of \$4,000.00 with \$628.00 in disbursements. In costs submissions on his behalf Mr Flaws had this to say:

*"It is submitted that the litigation strategy and tactics employed by the respondent unnecessarily complicated and prolonged the hearing and forced the applicant to provide a plethora of evidence and rebuttal which would otherwise not have been required.*

*It is submitted that the matters at issue were complex, requiring close analysis of a large number of documents and other material and that this complexity was at least in part the result of the approach to the matter the respondent adopted.*

*It is further submitted that if notwithstanding the submissions above, the Authority decides to adopt a tariff based approach to costs, the daily rate should be \$3,500.00 in consideration of all the circumstances of this matter and the marathon hours that the investigation meeting and subsequent provision of further information and submissions required."*

[3] The respondent suggests that an appropriate level of contribution to costs in this case would be \$1,000.00. In support of this assertion it says:

*"The applicant did not incur the significant costs usually associated with professional legal counsel*

*The applicant's conduct in numerous meetings that led up to the investigation, as well as that witnessed in the investigation itself, unnecessarily protracted proceedings...*

*The respondent incurred significant costs in preparation and providing witnesses at the hearing."*

[4] The respondent also noted that remedies were reduced for contributory conduct and that part of the applicant's disbursements arose because he engaged an advocate who lived in Whangarei and so incurred additional travel and other expenses.

### **Determination**

[5] This case did require scrutiny of a substantial body of factual material but that was simply a function of the fact that several separate grievances were alleged. It is not accepted that the respondent adopted a litigation strategy that added unnecessarily to the cost or complexity of the case. The respondent was not assisted by legal counsel but its defence (run by human resources manager Geoff White) was conducted in an appropriate manner.

[6] I see no reason to depart from what Mr Flaws called the tariff approach, albeit taking into consideration the fact that additional material was lodged and commented on after the meeting. I consider an award of \$3,000.00 to be appropriate in all the circumstances.

**[7] The respondent, Stevenson Engineering Limited, is therefore ordered to pay the sum of \$3,000.00 to the applicant Mr Kerai as contribution to his costs.**

Yvonne Oldfield

Member of the Employment Relations Authority

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