

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 68
5629678 and 5630599

BETWEEN	A LABOUR INSPECTOR Applicant
A N D	ALPS TRAVEL COMPANY LIMITED Respondent
BETWEEN	ALPS TRAVEL COMPANY LIMITED Applicant
A N D	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT Respondent

Member of Authority: David Appleton

Representatives: Jessica Ellison, Counsel for Applicant
Rob Davidson, Counsel for Respondent

Date of Investigation: Determined on the papers

Submissions Received: 4 May 2018 from the Labour Inspectorate
14 May 2018 from Alps Travel

Date of Determination: 15 May 2018

DETERMINATION OF THE AUTHORITY IN RELATION TO COSTS

[1] By way of a determination dated 23 February 2018¹, the Authority determined the matter of arrears owed to an employee, and imposed a penalty of \$75,000 upon Alps Travel Limited for various breaches of minimum employment standards. Costs were reserved, with a direction that the parties should seek to agree how costs were to be dealt with. If they were unable to agree costs within 14 days of the date of the

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substantive determination, any party seeking a contribution towards its costs had to serve and lodge a memorandum of counsel within a further 14 days. Any response was to be served and lodged within a further 14 days.

[2] The initial 14 days from the date of the determination expired on 9 March 2018, and the further 14 days within which to serve and lodge a memorandum seeking costs expired on 23 March 2018. However, the Labour Inspectorate did not lodge its memorandum of counsel seeking costs until 4 May 2018, some six weeks late.

[3] In her submissions, Ms Ellison seeks leave for her submissions to be lodged out of time, and explains that an attempt was made to agree costs with Alps Travel, but that a response to an email from the Labour Inspectorate's previous counsel dated 22 March was not replied to by Mr Davidson until 26 April.

[4] Mr Davidson has sent an email to the Authority strongly objecting to the Authority granting an extension of time for the lodging of costs submissions by the Labour Inspectorate, stating that it completely failed to adhere to the timetable imposed by the Authority. He points out that the delay is a substantial delay, and says that the respondent believed that the matter was at an end and that no costs were being sought by the Labour Inspectorate.

[5] Ms Ellison has not explained in her submission why the Labour Inspectorate (or counsel on its behalf) did not either apply for an extension, or simply lodge submissions on costs, when the initial time limit was about to expire. I infer that it was an oversight, perhaps caused by a change in counsel. I am prepared to accept that no disrespect was intended to either the Authority or Alps Travel by the lapse.

[6] However, I agree with Mr Davidson that the delay is not minor, and that his client was entitled to expect that the Labour Inspectorate had decided not to pursue costs when the deadline came and went and nothing was lodged or served.

[7] The Authority routinely extends time limits to parties when there are genuine reasons for a deadline being missed, especially when a refusal would be likely to prejudice a party in pursuing or defending a substantive matter. Rarely does an extension in such circumstances prejudice the other party in my experience. However, the matter of costs is somewhat different in that it is the last step to be determined in any matter before the Authority, and the losing party is entitled to have

closure. Time limits imposed for the service and lodgement of submissions are usually short for that very reason.

[8] I believe that it would be unjust to allow the Labour Inspectorate's submissions to be lodged six weeks after its deadline expired when there is no substantive reason for the delay, other than a probable oversight. Alps Travel is entitled to expect the Authority's deadlines to be honoured, or extensions sought before their expiry.

[9] There is another reason why I am not inclined to accept the Labour Inspectorate's late submission for costs. That is because I would not have been minded to have awarded \$15,000 costs to it in any event. The Authority's investigation was almost exclusively taken up by the matter of arrears for one employee. Initially, \$66,611 was sought by the Labour Inspectorate on behalf of the employee, which was revised down to \$34,624 by the end of the investigation meeting, but the Authority found that \$10,720 was owed.

[10] Whilst I do not in any way criticise the Labour Inspectorate for this discrepancy, as its calculations had to change as more information was disclosed, a four day investigation meeting was arguably out of proportion to the amount recovered, and more work could arguably have been done between the Labour Inspector and Alps Travel outside of the investigation meeting to narrow down the arrears without the Labour Inspectorate's counsel being involved.

[11] Taking these factors into account, I decline to allow the Labour Inspectorate to lodge its costs submissions out of time. Effectively, this means that costs shall lie where they fall. This disposes of the matter of costs between the parties in the Authority.

David Appleton
Member of the Employment Relations Authority