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Labour Inspector v Singh (Auckland) [2018] NZERA 60; [2018] NZERA Auckland 60 (27 February 2018)

Last Updated: 14 March 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 60
3004596

BETWEEN A LABOUR INSPECTOR Applicant

AND

AND

JUJHAR SINGH First Respondent

KULDEEP KAUR
Formerly Second Respondent

Member of Authority: Andrew Dallas

Representatives: Marija Urlich, Counsel for Applicant

No appearance for the First Respondent

Scott Leith, Counsel for Formerly Second Respondent

Determination: 27 February 2018

COSTS DETERMINATION OF THE AUTHORITY

Narrative

[1] This determination resolves the matter of costs between the Labour Inspector and Kuldeep Kaur, formerly second respondent to these proceedings.

[2] On 7 March 2017, the Labour Inspector lodged a statement of problem seeking to join Jujhar Singh and Ms Kaur under [s 234](#) of the [Employment Relations Act 2000](#) (as it was then) to a determination of the Authority.¹

[3] Mr Singh was sole director and shareholder of Binde Enterprises Limited (Binde). Mr Kaur was a part-time administration employee of Binde. Mr Singh and Ms Kaur were initially represented by the same counsel and a joint, albeit skeletal, statement in reply was lodged.

¹ *A Labour Inspector v Binde Enterprises Limited* [2016] NZERA Auckland 399

[4] The involvement of Ms Kaur was discussed during several case management conferences. From the outset, the Authority expressed concern about Ms Kaur not being a director, officer or senior employee of Binde.²

[5] After discussion, it became apparent that in order to be able to properly assess the Labour Inspector's case against Ms Kaur, it would be necessary to fully understand what Mr Singh's defence would be if authorisation under [s 234](#) of the Act was granted. Consequently, Mr Singh was directed to lodge an amended statement in reply.

[6] In a Minute dated 17 May 2017, the Authority recorded:

...

[2] The involvement of Kuldeep Kaur in the proceedings will be subject to further discussion with the Authority once Mr Singh lodges and serves his Amended Statement in Reply.

[3] If the Labour Inspector wishes to continue to proceed against Ms Kaur, her interests and those of Mr Singh may not align, in which case Ms Kaur would require alternative legal representation. Any legal representative instructed in such circumstances will need to be able to comply with the Authority's timetabled directions including being available to appear at the investigation meeting.

...

[7] Mr Singh's amended reply did not seek to shift blame onto Ms Kaur or, for that matter, even mention her.

[8] Ms Kaur, by this stage independently represented, lodged a comprehensive statement in reply on 7 August 2017. Ms Kaur denied any involvement in the Binde's breaches of minimum standards as found by the Authority and said she carried out her function and duties under the direction or authority of Ms Singh at all times during the employment. This would be subsequently confirmed in her witness statement.

[9] An investigation meeting was held on 9 August 2018 to consider the Labour Inspectors claims against Mr Singh and Ms Kaur. After hearing evidence from the liquidator of Binde, the meeting was adjourned pending further inquiries into the financial affairs of the company including the prospect of payment of some (or all) of the arrears of wages and holiday pay by way of tax refund from the Department of

Inland Revenue.³

² See, *Hixon v Campbell* [2014] ERNZ 53 at [108] and [116]

³ Above n 1 at [51]; [58].

[10] Also during the investigation meeting, the Authority discussed with Counsel for Ms Kaur the possibility of her applying for legal aid. Counsel advised the Authority he was not a civil legal aid provider but would make inquiries about obtaining this status.

[11] At the conclusion of the investigation meeting, the Authority issued a Minute which recorded, among other things: "[t]he parties agreed there would be no order as to costs arising out of today's investigation meeting. The Authority is in agreement with this course".

[12] On 21 November 2017, the Labour Inspector applied to withdraw proceedings against Ms Kaur. In granting the Labour Inspector's application, the Authority left open the issue of costs.

[13] In a memorandum on costs subsequently lodged by Kaur, through her representative, she said she was "entitled to greater costs than the daily tariff of

\$4,500 + GST, up to and including indemnity costs". A tax invoice provided by Ms Kaur suggested her total costs in defending the matter were \$7,475 inclusive of goods and services tax.

[14] The memorandum did not mention an application for, or grant of, legal aid to Ms Kaur. It did however suggest the Labour Inspector's decision to make Ms Kaur a party to the proceeding was a misapprehension that Ms Kaur was involved in the incorporation of Binde four years before she commenced working for the company or, indeed, had migrated to New Zealand.

Evaluation

[15] The starting point of any costs assessment is the notional daily tariff of

\$4500.⁴ However, as stated above, parties agreed there would be no order as to costs arising of the investigation meeting. Notwithstanding the agreement, the Labour

⁴ *PBO Ltd v Da Cruz* [2005] NZEmpC 144; [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].

Inspector conceded to some extent there was grounds for an award of costs to Ms

Kaur and suggested this should be \$1000.

[16] Counsel for Ms Kaur said her costs continued after the investigation meeting as further inquiries were made with Binde's liquidator. I accept this was likely the case but this amount was not particularied in Ms Kaur's cost memorandum.

[17] Taking these matters into account, I find the sum of \$1000 must be paid by the

Labour Inspector to Ms Kaur within 28 days of the date of this determination.

[18] However, having regard to the broader circumstances of the case, particularly those identified at paragraph [3] above, if the matter of costs had not be already agreed by the parties, the costs award to Ms Kaur would have been much greater and most likely approaching or equalling indemnity costs.



Andrew Dallas

Member of the Employment Relations Authority

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