

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 100
3111053

BETWEEN DOUGLAS ANTHONY MENDE
 Applicant

AND MENDE BIOTECH LIMITED
 Respondent

Member of Authority: Michael Loftus

Representatives: Jon Parker, counsel for the Applicant
 Matt Young, advocate for the Respondent

Submissions Received: 28 February 2022 from the Applicant
 17 March 2022 from the Respondent

Date of Determination: 18 March 2022

COSTS DETERMINATION OF THE AUTHORITY

[1] On 21 February 2022 I issued a determination in which I concluded Mr Mende was due unpaid wages and holiday pay.¹

[2] Costs were reserved and as the successful party Mr Mende now seeks a contribution toward those he incurred pursuing his claims.

[3] Normally the Authority will use a daily tariff approach when addressing a costs claim, with the current starting point being \$4,500 for the first day and \$3,500 for each day thereafter.² While the investigation was spread over two days each was partial and the total would be a day. Applying the tariff that would see a contribution in the order of \$4,500 but Mr Mende

¹ [2022] NZERA 46

² *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 and *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135

seeks an increase on the basis the respondent's behaviour unnecessarily increased his costs. The behaviours in question were a failure to clarify its counterclaim and align it with the Authority's jurisdiction which led to two further telephone conferences along with a further failure to provide its briefs as timetabled.

[4] Mende Biotech accepts Mr Mended was successful and costs follow the event. It refers to the tariff and agrees with the view I have already expressed that a day is appropriate. It notes Mr Mende's submission but comments its purported failures must be balanced against:

- (a) the fact little effort was required on Mr Mende's behalf with his brief comprising a single page;
- (b) there were only three witnesses, two of whom appeared for the respondent; and
- (c) the counterclaim was abandoned well before the investigation.

[5] The above points are offered as arguments against raising the tariff as opposed to arguments it be lowered. Mende Biotech accepts an award of \$4,500 is appropriate.

[6] With one exception I concur with the respondent's position. The exception is when the counterclaim was withdrawn. While it might have been implied the lack of a revised claim indicted a withdrawal, that was not expressly stated till the morning of the investigation. That said the absence of a claim meant there was nothing to prepare a reply to and here I also note I have no information about how the alleged breaches by the respondent actually increased Mr Mende's costs.

[7] When I consider the two additional telephone conferences I also have to note they were short and I am not convinced they took the total hearing time beyond a single day. I also note the respondent admitted the claimed breaches, though disputed their extent, which further reduced the effort required. This was, as the respondent says, a relatively simple matter lacking extensive statements or submissions.

[8] Suffice to say this means I am not convinced an increase in the tariff is warranted.

Conclusion and orders

[9] For the above reasons I order Mended Biotech Limited pay Douglas Mende the sum of \$4,500.00 (four thousand, five hundred dollars) toward the costs Mr Mende incurred in pursuing his claim.

[10] Payment is to be made within 28 days of this determination.

Michael Loftus
Member of the Employment Relations Authority