

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 245
3169263

BETWEEN DOUGLAS ANTHONY MENDE
 Applicant

AND MENDE BIOTECH LIMITED
 Respondent

Member of Authority: Michael Loftus

Representatives: Jon Parker, counsel for the Applicant
 Murray Osmond, advocate for the Respondent

Submissions Received: 27 May 2022 from the Applicant
 13 June 2022 from the Respondent

Date of Determination: 14 June 2022

COSTS DETERMINATION OF THE AUTHORITY

[1] On 24 May 2022 I issued a determination in which I addressed an application from Mr Mende asking that Mende Biotech be ordered to comply¹ with an earlier determination of the Authority regarding unpaid wages and holiday pay.²

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

[3] Normally the Authority will use a daily tariff approach when addressing a costs claim, with the amount being calculated on basis of time taken in an investigation meeting.³ However in this instance there was no investigation meeting with the matter being determined after a

¹ *Mende v Mende Biotech Limited* [2022] NZERA 210

² *Mende v Mende Biotech Limited* [2022] NZERA 46

³ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 and *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135

telephone conference and on the papers though that does not preclude the application with Mr Mende seeking \$4,500.

[4] In support of his application, he says:

The additional [compliance] application was totally unnecessary in all the circumstances. Whilst the respondent was entitled to appeal, no effort was made to secure a stay order until after the latest matter came before the Authority and was the subject of a teleconference and a further memorandum from Mr Mende.

[5] Mende Biotech accepts Mr Mende was successful and *that ordinarily costs follow the event*. It does, however, challenge the quantum claimed which it labels *well out of proportion* and excessive.

[6] In support of its position Mende Biotech notes the matter was determined on the basis of a *brief* conference call and an exchange of memoranda with no need for witnesses, briefs or travel. Reference is also made to the Authority's practice note that states cost claims should be supported with evidence such as invoices and that has not occurred here. In closing Mende Biotech suggests an award of \$300 plus GST would be appropriate.

[7] The issues raised by both parties have merit. This was, as was said on Mr Mende's behalf, a case that should not have had to be taken. Conversely Mende Biotech is also correct when it says the type of effort recognised by the tariff was absent here and what was done should not have required a days work as the amount sought would suggest. The teleconference took 14 minutes and a perusal of the documentation provided on Mr Mende's behalf would suggest no more than another hour or two.

[8] The real issue though is the lack of evidence about actual costs. That however is balanced to some extent by the fact work was clearly required and Mende Biotech accepts something is due. Given the circumstances I consider a useful guide to be Legal Aid's "Civil (Employment) Fixed Fees Schedule" promulgated by the Ministry of Justice. It would suggest a sum in the order of \$600 appropriate. To that, and given my concurrence with Mr Mende's view the case should not have to have been taken, I add the Authority's filing fee.

Conclusion and orders

[9] For the above reasons I order Mende Biotech Limited pay Douglas Mende the sum of \$671.56 (six hundred and seventy one dollars and fifty six cents) 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