

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 431  
5382945

BETWEEN                      MADHUKAR SHYAM  
   NARAYAN  
   Applicant

AND                              TELECOM NEW ZEALAND  
   LIMITED  
   Respondent

Member of Authority:        Trish MacKinnon

Investigation Meeting:        On the papers received by 30 July 2013

Date of Determination        24 September 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In my determination dated 1 May 2013<sup>1</sup> I dismissed all of Mr Narayan's claims. I found he had not been unjustifiably dismissed, or unjustifiably disadvantaged in his employment by the withholding of a promotion. Nor had he suffered discrimination because of his national origin.

[2]     I further found no substance to Mr Narayan's claim to have been bullied in his employment. I found no evidence to support his claim that Telecom New Zealand Limited (Telecom) had failed to provide him with a safe and healthy work environment. In short, Mr Narayan's application to the Authority failed comprehensively.

[3]     The issue of costs was reserved and Telecom now seeks a contribution of \$7,000 to the costs it incurred in defending Mr Narayan's claims, and \$500 towards costs incurred in preparing and filing its costs submissions. Telecom provided

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<sup>1</sup> [2013] NZERA Auckland 149

evidence of the actual costs it incurred, which were \$15,060.50 plus GST and disbursements.

[4] Telecom seeks a contribution above the Authority's notional daily tariff of \$3,500 because the nature and extent of Mr Narayan's claims resulted in significant costs being incurred in responding to them. Telecom also cites Mr Narayan's conduct during the Authority's investigation process as a factor contributing to its costs, detailing aspects of that conduct in its submission.

[5] Mr Narayan, who did not attend the one- day investigation meeting, opposes Telecom's costs application. He refers to delays caused by Telecom's delays in filing various documents and rejects Telecom's claim that his conduct in the investigation process was obstructive. He questions the need for Telecom to engage external counsel, and the "*excessive*" costs it thereby incurred, submitting that Telecom should bear that cost.

[6] The Authority derives its power to award costs from clause 15 of Schedule 2 of the Employment Relations Act 2000, which is set out below:

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[7] Underpinning the award of costs are principles which have been developed and applied over several years. The principles were referred to with approval by the Full Court in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*.<sup>2</sup> Both parties have alluded to the discretionary nature of the Authority's ability to award costs.

[8] Having considered the submissions of the parties, and applied the principles referred to above, I find it appropriate that costs, which normally follow the event, should do so in this instance. Telecom incurred costs in the defence of a number of claims from Mr Narayan, all of which failed. It is entitled to a contribution towards those costs.

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<sup>2</sup> [2005] ERNZ 808 (EmpC)

[9] I am not persuaded by Mr Narayan's submission that Telecom had no need to engage external counsel. That was properly a decision for Telecom to make, and I do not find it an unreasonable one.

[10] I accept that Telecom's costs were increased by the nature and extent of Mr Narayan's claims. While none of those claims raised complex matters of law, all had to be addressed in evidence by its witnesses, and in submissions. I also accept, although to a lesser extent, that Mr Narayan's conduct during the process contributed to Telecom's costs. For these reasons, I consider that a modest scaling up from the notional daily tariff is appropriate.

[11] I order Madhukar Shyam Narayan to pay to Telecom New Zealand Limited the sum of \$4,000 in costs.

Trish MacKinnon  
Member of the Employment Relations Authority