

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 337
5590258

BETWEEN SANDEEP NATH
 Applicant

AND ADVANCE
 INTERNATIONAL
 CLEANING SYSTEMS NZ
 LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Tim Oldfield for Applicant
 Stephen Langton for Respondent

Submissions received: 30 September 2016 from Applicant
 26 September 2016 from Respondent

Determination: 4 October 2016

**COSTS DETERMINATION OF THE EMPLOYMENT RELATIONS
AUTHORITY**

A. Mr Nath is ordered to pay to Advance International Cleaning Systems NZ Limited the sum of \$4,000 as a contribution to its costs.

[1] In a determination dated 30 August 2016¹ I found:

- a) One or more conditions of Mr Nath's employment had not been affected to his disadvantage by unjustified actions of Advance International Cleaning Systems NZ Limited (Advance);

- b) Mr Nath had not been unjustifiably dismissed;

¹ [2016] NZERA Auckland 293.

- c) Mr Nath failed to establish his claims that Advance had breached its obligations of good faith toward him;
- d) Mr Nath failed to establish his claim that Advance had breached the terms of the employment agreement;
- e) Mr Nath failed to establish his claim that Advance had breached the Fair Trading Act 1986; and
- f) Mr Nath failed to establish his claim that he was owed outstanding wages.

[2] I also found that I did not have jurisdiction to investigate and determine a counter-claim made by Advance against Mr Nath.

[3] I reserved costs, indicating that if the parties were unable to resolve that issue, both parties would have the opportunity to file cost memoranda and evidence. These have now been received by the Authority for consideration.

[4] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event.

Determination of costs

[5] Under normal circumstances the Authority applies a starting point of a notional daily tariff for quantifying costs. Both parties accept that in this case costs should follow the event.

[6] Advance was the more successful of the parties and has provided evidence to the Authority that it incurred costs in excess of \$23,000. Advance seeks a contribution of \$7,000 to its costs. Mr Nath has submitted that an amount of between \$2,000 and \$2,500 would be appropriate.

[7] As held by the Employment Court, the assessment of an appropriate contribution to costs in the Authority requires a different approach to assessing costs to that used by the Employment Court.² As noted in *PBO Ltd (formerly Rush Security*

² *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4 at [6].

*Ltd) v Da Cruz*³ awards in the Authority will be modest taking into account conduct which increases costs unnecessarily.

[8] As noted by the Court in *Stevens v Hapag-Lloyd (NZ) Ltd* proceedings in the Authority are intended to be low level, cost effective, readily accessible and non-technical.⁴ Also of relevance is the comment by the Court that:⁵

parties who elect to incur costs that are likely to exceed the Authority's notional daily rate are entitled to do so but cannot confidently expect to recoup any additional sums.

[9] The daily tariff applying to this matter is \$3,500. The matter took the better part of a day and therefore I have used the starting point of \$3,500. Advance seeks an uplift to the daily tariff to \$7,000 on the basis that Mr Nath withdrew significant claims at the start of the investigation meeting and the parties were asked to submit written submissions after the conclusion of the investigation meeting which increased its costs.

[10] The claims withdrawn by Mr Nath at the commencement of the investigation meeting were not insignificant. Conduct which increases costs unnecessarily can be taken into account in uplifting or reducing an award.⁶ The raising then withdrawal of Mr Nath's claims for the recovery of Optimizer HQ shares which he valued at \$100,000 as compensation arising out of a breach of good faith, the claim for a penalty for breach of good faith and a claim regarding the restraint of trade falls within the type of conduct for which an uplift is appropriate. I consider an uplift of \$500 is sufficient to reflect this.

[11] In all the circumstances of this matter I consider it appropriate that Mr Nath pay to Advance the amount of \$4,000 as a contribution to Advance's costs.

Vicki Campbell
Member of the Employment Relations Authority

³ (2006) 7 NZELC 98,128; [2005] ERNZ 808; (2005) 3 NZELR 1 (EMC).

⁴ [2015] NZEmpC 28 at [94] and cited with approval in *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [107].

⁵ *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [108].

⁶ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808, 819 at [44].