



New Zealand Employment Relations Authority Decisions

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Nayak v Urban Turban New Zealand Limited (Auckland) [2017] NZERA 180; [2017] NZERA Auckland 180 (26 June 2017)

Last Updated: 4 July 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 180
3002373

BETWEEN SACHIN NAYAK Applicant

A N D URBAN TURBAN NEW ZEALAND LIMITED Respondent

Member of Authority: Rachel Larmer

Representatives: Nathan Santesso, Advocate for Applicant

Bhushan Arolkar, Director of Respondent

Investigation Meeting: On the papers

Submissions Received: 06 June 2017 from Applicant

No submissions from Respondent

Date of Determination: 26 June 2017

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

A Within 28 days of the date of this determination Urban Turban New Zealand Limited is ordered to pay Mr Nayak \$5,500 towards his actual legal costs.

Employment relationship problem

[1] *Substantive determination* – In its substantive determination dated 01 June

2017¹ Mr Nayak succeeded with all of the claims he made against his former employer Urban Turban New Zealand Limited (Urban Turban).

[2] *No agreement* – The parties were encouraged to resolve costs by agreement but that has not occurred. Mr Nayak now seeks a costs award in his favour.

[3] *Submissions* – Mr Nayak says he incurred in excess of \$6,500 legal costs. He asks that he be awarded more than the notional daily tariff (currently \$4,500) on the

1 [2017] NZERA Auckland 160.

grounds that Urban Turban's actions unnecessarily increased his legal costs. Urban

Turban did not file any costs submissions.

[4] *Costs principles* – Costs are discretionary with the discretion to be exercised judicially on a principled basis. The factors relating to an award of costs by the Authority are so well known there is no need to set them out here again. Suffice to say I have been guided by these well-established costs principles.

[5] *Notional daily tariff* – I adopt the Authority’s usual notional daily tariff based approach to costs. This matter involved a one day investigation meeting. The notional starting point for assessing costs is \$4,500.

[6] *Reduction to notional tariff* – I am not aware of any factors that warrant a reduction being made to the notional starting tariff.

[7] *Increase to notional daily tariff* – Mr Nayak says his costs were unnecessarily increased because of repeated delays to mediation which his legal representative had to address. I accept that is a relevant factor.

[8] *Unnecessarily increasing legal costs* – I consider that Urban Turban also unnecessarily extended the length of time needed for the investigation meeting because it failed to comply with the Authority’s directions to file witness statements from its witnesses so this evidence had to be lead. It also failed to produce relevant documentation which lead to additional unnecessary time being spent on addressing that. In addition Mr Bhushan Arolkar scheduled a business meeting while the investigation meeting was on so we had to all waste time waiting by the telephone (he attended by telephone) for him to finish his meeting.

[9] *Outcome* – I consider this is an appropriate case in which to increase the notional starting tariff by \$1,000. Urban Turban is ordered within 28 days of the date of this determination to pay Mr Nayak \$5,500 towards his actual legal costs and to reimburse him \$71.56 for his filing fee.

Rachel Larmer

Member of the Employment Relations Authority

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