

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 198
5428638

BETWEEN

RAJESH SABAPATHY
Applicant

AND

JETSTAR AIRWAYS LIMITED
Respondent

Member of Authority: Christine Hickey

Representatives: Richard Maze, Counsel for the applicant
Michael O'Brien and Tessie von Dadelszen, Counsel for
the respondent

Costs submissions received: From the applicant on 22 September 2014
From the respondent on 6 October 2014

Determination: 28 November 2014

COSTS DETERMINATION OF THE AUTHORITY

Rajesh Sabapathy must pay Jetstar Airways Limited \$3,900.00 as a contribution towards its legal costs.

[1] On 25 August 2014 I issued a determination dismissing Mr Sabapathy's claims. I reserved the issue of legal costs.

[2] The Authority's jurisdiction to make costs orders is found in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). Costs are at the discretion of the Authority.

[3] Each case is to be treated in light of its own circumstances. The primary purpose of costs is to compensate the successful party. Jetstar was successful in defending Mr Sabapathy's claims.

[4] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and were outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ a judgment of the Full Court of the Employment Court.

[5] The Court in the *Da Cruz* case noted that in exercising its discretion the Authority frequently judges costs against a notional daily hearing rate. That notional rate is currently \$3,500 per day. Costs must be reasonable and costs awards are generally modest.

[6] The investigation meeting took one day, including submissions although supplementary written submissions were provided later. The starting point for my consideration of costs is \$3,500, for the one day meeting.

The parties' submissions

[7] Jetstar claims that amount should be increased to \$7,000 and that disbursements of \$395 which are for travel and accommodation costs for Mr O'Brien should also be paid by Mr Sabapathy. Mr O'Brien submits that the daily tariff amount should be increased because the applicant's conduct of his case increased the amount of work done by Jetstar's counsel:

- Mr Sabapathy filed a new witness statement the afternoon before the investigation meeting without seeking leave from the Authority to do so;
- the claim about an alleged premium being charged for employment was dropped the day before the investigation meeting;
- following the investigation meeting and the provision of further evidence by Jetstar Mr Sabapathy dropped his claim for payment from 4 May 2009 until 14 June 2009.

[8] Mr O'Brien submits that Jetstar's counsel had already prepared for the defence of the two claims that were withdrawn and had prepared for the meeting based on the first witness statement filed by Mr Sabapathy meaning further last minute preparation had to be done which caused unnecessary duplication leading to increased costs for Jetstar.

¹ [2005] ERNZ 808

[9] Mr Maze for Mr Sabapathy considers an award of \$3,500 is appropriate as it is a substantial award that takes account of preparation time as well as hearing time. He submits that Mr O'Brien's travel and accommodation costs should not be borne by his client.

Determination

[10] I consider that Mr Sabapathy's late changes to his evidence and his late withdrawal of two claims would have increased the cost of Jetstar's legal representation somewhat. However, I do not agree that the daily tariff should be doubled. Instead, standing back and taking all matters into consideration the daily tariff should be increased by \$400 to \$3,900.

[11] Mr O'Brien travelled from Auckland to Christchurch the afternoon before the investigation meeting and stayed overnight in a hotel. Local counsel could have been briefed and it is not reasonable to expect Mr Sabapathy to pay for the costs incurred by Jetstar choosing to use out of town counsel. Therefore, I dismiss the claim for travel and accommodation disbursements.

Christine Hickey

Member of the Employment Relations Authority