

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

**[2019] NZERA 491
3058574**

BETWEEN

ANOOP SINGH
Applicant

AND

FADI ALHADDADIN
Respondent

Member of Authority: Eleanor Robinson

Representatives Matt McCarten, for Applicant
Vance Leach, for Respondent

Submissions received: 14 August 2019 from the Applicant
31 July 2019 from the Respondent

Determination: 20 August 2019

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination [2019] NZERA 410 it was determined that the correct identity of the employer was not Mr Fadi Alhaddadin as claimed by the Applicant, Mr Anoop Singh, but J H Limited.

[2] Costs were reserved in the hope that the parties would be able to settle this issue between them. Unfortunately they have been unable to do so, and the parties have filed submissions in respect of costs.

[3] The matter was determined ‘on the papers’.

[4] Mr Leach, on behalf of Mr Alhaddadin, citing actual costs of \$7,057.50 (excluding GST and disbursements) is seeking a contribution to those costs.

[5] Mr McCarten, on behalf of the Applicant, submits that costs should lie where they fall.

[6] Mr Leach submits that an uplift in the Authority's daily tariff in regard to costs is appropriate on the basis that the Applicant was aware at all times of the correct identity of the employer as being J H Limited, but chose to ignore it.

[7] The basis for the Applicant's knowledge being (i) emails in which the Applicant detailed his Employer as J H Limited; (ii) bank statements showing his Employer as J H Limited; and (iii) the Applicant's work visa completed and filed in Immigration NZ Limited with J H Limited as the Employer.

[8] It is submitted by Mr Leach that despite this knowledge the Applicant purposefully pursued his claim against Mr Alhaddadin and thereby caused Mr Alhaddadin to incur significant costs to defend himself.

[9] Mr McCarten submits that the mistake in the identity of the employee on the part of the Applicant was a genuine mistake occasioned by Mr Alhaddadin by signing himself as the Employer on the written employment agreement.

[10] Mr McCarten submits that in the first instance costs should lie where they fall, or alternatively should be at the lower end of the tariff.

Principles

[1] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

15 Power to award costs

- (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.

[2] Costs are at the discretion of the Authority, as observed by the current Chief Judge Colgan in *NZ Automobile Association Inc v McKay*¹.

[3] The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)*².

¹*NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622

²*PBO Limited v Da Cruz v* [2005] 1 ERNZ 808

[1] It is also a principle that: “Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful parties conduct, although conduct which has increased costs unnecessarily” can be taken into consideration and thereby increase the notional daily tariff rate.

Determination

[4] The matter was determined ‘on the papers’. Costs normally follow the event and the Respondent is entitled to a contribution towards its costs.

[5] I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take a half day investigation meeting as the starting point.

[6] This starting point should be uplifted taking into consideration the factors identified in the submissions of the parties.

[7] Accordingly Mr Singh is ordered to pay Mr Alhaddadin the sum of \$2,750.00 towards its legal costs.

Eleanor Robinson
Member of the Employment Relations Authority