

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 193  
5424965

BETWEEN

DHAN SINGH  
Applicant

A N D

DONUT INCORPORATED  
LIMITED trading as LITTLE  
INDIA MERIVALE  
Respondent

Member of Authority: M B Loftus

Representatives: Dean Kilpatrick, Counsel for Applicant  
Hugh Matthews, Counsel for Respondent

Submissions Received: 22 October 2014 from Applicant  
28 October 2014 from Respondent

Date of Determination: 26 November 2014

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 28 August 2014 I issued a determination concluding that Mr Singh was owed approximately \$29,000 for unpaid holidays. The sum awarded was less than that claimed and it was then reduced by \$10,000 which was money Mr Singh acknowledged he owed to Donut Incorporated Limited (DIL).

[2] DIL successfully defended a claim it had unjustifiably dismissed Mr Singh.

[3] Costs were reserved.

[4] Normally the Authority will use a daily tariff approach when addressing a costs claim (refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808). The normal starting point is \$3,500 per day and from there adjustment may be made depending on the circumstances.

[5] On 22 October Mr Singh filed an application for a contribution toward his costs. He seeks \$3,500.

[6] In support of his claim he cited the daily tariff and notes the investigation took a day and a half. To that he adds a half day in mediation and supports this claim with a reference to the comments of Judge Couch in *Jinkinson v Oceana Gold (NZ) Ltd* [2011] NZEmpC 2. At [16] the Judge noted:

*... it seems to me that costs incurred in further mediation directed by a Judge pursuant to a statutory requirement should be regarded as costs necessarily incurred in the proceedings before the Court and subject to the same considerations for recovery as other costs. I therefore do not accept Mrs Brook's submission that costs incurred by the plaintiff in relation to further mediation ought to be excluded from consideration.*

[7] Having, for the above reasons, concluded that had he been entirely successful he could have sought two days at the daily tariff he halves the amount in recognition of his partial success.

[8] DIL's response is there is a preliminary question. It is who was successful? DIL contends the question should be answered in the company's favour given it successfully defended the dismissal claim and the remedies awarded in respect of the arrears were significantly less than originally sought. Notwithstanding that position and its corollary that a costs award should favour DIL the company submits, again in recognition each party attained a degree of success, costs should lie where they fall.

[9] It is well established costs follow the event. That raises the question of what was the event. It was a claim by Mr Singh in respect of which he had partial, but significant, success. Here note must be taken of the Courts comment it is improper to adopt a scoreboard approach (*Bourne v Real Journeys Ltd* [2012] NZEmpC 2). This leads me to conclude Mr Singh's partial success means he is entitled to an award of costs especially as DIL, while suggesting it might have ground for a similar claim, did not make one.

[10] That conclusion raises the issue of quantum.

[11] I discount Mr Singh's argument time spent in mediation should be recognised. Judge Couch's comments were made in the context of *additional* court ordered

mediations. He also noted the principle each party bear its costs in respect of an initial mediation remained valid. I understand there was only one mediation.

[12] That leaves day and a half spent on the investigation. As conceded by Mr Singh his failure with the dismissal claim warrants a reduction in the tariff. I must also recognise a party should not be forced to litigation to get what was a significant amount in unpaid wages.

[13] Having weighed the factors, and the submissions, I consider it appropriate to follow the approach of the parties and halve the tariff (or thereabouts given a bit of rounding).

[14] I therefore order the respondent, Donut Incorporated Limited, pay the applicant, Dhan Singh, the sum of \$2,600 (two thousand, six hundred dollars) as a contribution toward the costs Mr Singh incurred in pursuing his claims.

M B Loftus  
Member of the Employment Relations Authority