

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2014] NZEmpC 24
ARC 41/12**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

BETWEEN SUNIL KUMAR BALI
Plaintiff

AND SRG HOLDINGS LIMITED TRADING
AS SUPER VALUE
Defendant

ARC 78/12

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER of an application for security for costs

BETWEEN SUNIL KUMAR BALI
Plaintiff

AND SRG HOLDINGS LIMITED TRADING
AS SUPERVALUE
First Defendant

AND NZ LIQUOR MERCHANTS LIMITED
TRADING AS SUPER LIQUOR
Second Defendant

Hearing: Following initial memoranda filed by the defendants on
16 December 2013, extension sought by the defendants on
29 January 2014, memorandum in reply from the plaintiff on
30 January 2014 and further memoranda filed by the plaintiff on
12 February 2014

Representatives: Mr S Bali in person, supported by Mr V Koli
Mr M Kyne, advocate for defendants

Judgment: 14 February 2014

COSTS JUDGMENT NO 2 OF JUDGE M E PERKINS

[1] Following my earlier judgment on costs dated 5 February 2014, Mr Bali has now filed a memorandum in answer to the application for costs, which has been filed on behalf of the defendants.

[2] In the memorandum, Mr Bali has repeated matters raised during the course of the hearing of the substantive challenges. That is understandable in view of the fact that Mr Kyne, the employment advocate on behalf of the defendants, refers to such matters in support of the application for costs on behalf of the defendants.

[3] Insofar as the costs claim itself is concerned, Mr Bali reiterates that despite Mr Kyne seeking full costs and disbursements incurred in the two Employment Relations Authority hearings, the Authority has made awards of costs against him in respect of the hearings and there is no challenge on the part of the defendants as to those awards. Mr Bali states that he does not have funds to meet the awards in any event.

[4] Insofar as the costs claim in respect of the challenges to the Court is concerned, Mr Bali makes the pertinent submission that Mr Kyne, on behalf of the defendants, has not provided any substantiation for the costs and disbursements now claimed. In any event, Mr Bali states in his memorandum that he is in a precarious financial position and has insufficient funds to be able to make any contribution towards costs.

[5] Mr Kyne's memorandum which contains the defendant's application for costs in respect of the Court proceedings is most unhelpful. The total fees alleged to have been incurred total \$10,575. That claim is supported by a three line narrative, which is inadequate summary of the attendances, which Mr Kyne alleges were made on behalf of the defendants. In addition there is a claim for disbursements of \$1,037.68. No supporting invoices, which might substantiate such a claim, have been provided.

[6] Inadequate information has been provided by the defendants to enable the Court to exercise its discretion in this matter. Accordingly, I am left with having to apply experience in such matters in order to assess a reasonable contribution, which

Mr Bali should make towards the defendant's costs and based upon the principles normally applying to such awards in this Court.

[7] This Court regards itself as bound by three decisions of the Court of Appeal establishing such principles.¹ The principles normally applying are that costs should follow the event so that the unsuccessful party should make a contribution towards the successful party's costs. Such costs awards are usually two thirds of the actual/reasonable costs incurred.

[8] In this case the actual hearing of the matter lasted just over one half a day. Prior to the hearing there were some attendances relating to telephone directions conferences. There was also a hearing in respect of an application made by the defendants for security for costs, which being made so late in the piece, was unsuccessful.

[9] Mr Kyne's preparation for the hearing would have been minimal in view of the fact that it was largely repetitive of the preparation work which had already been undertaken in respect of the hearings before the Authority.

[10] In all the circumstances I regard the claim of \$10,575 for total fees as excessive. Certainly there was an inadequate explanation as to how total fees in that sum have been incurred. Having regard to the fact that Mr Kyne is an experienced employment advocate I assess reasonable costs for the attendances, which would have been incurred in this matter, to be \$4,000. Accordingly there will be an award of costs against Mr Bali for two thirds of that sum, and rounded back to \$2,600. No allowance is made for disbursements claimed as the Court has not been provided with documents which would verify those disbursements. Insofar as the Authority's costs awards are concerned, the present awards will simply stand without amendment.

M E Perkins
Judge

Judgment signed at 4.30pm on 14 February 2014

¹ *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA); *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA); *Health Waikato Ltd v Elmsly* [2004] 1 ERNZ 172 (CA).