

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 193
3216459

BETWEEN ADA BARTLETT
Applicant

AND LARSON-JUHL NEW
ZEALAND LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Chrissy Gordon, advocate for the Applicant
Paul Mathews, advocate for the Respondent

Submissions Received: 5 March 2024 from the Applicant
22 March 2024 from the Respondent

Date of Determination: 4 April 2024

COSTS DETERMINATION OF THE AUTHORITY

Substantive determination

[1] In its determination dated 21 February 2024 the Authority found in favour of Ada Bartlett in respect of her employment relationship problems.¹

Non-publication

[2] The Authority declined an application made by Ms Bartlett for non-publication but made an interim order prohibiting from publication Ms Bartlett's name for a period of 28 days from the date of the substantive determination to enable a challenge in the Employment Court.² At the end of that 28 day period the determination provided that

¹ *HGO v Larson-Juhl New Zealand Limited* [2024] NZERA 95.

² Above n 1 at [7].

unless there was further order of the Employment Court or the Authority the interim order would lapse and there would be no restriction on publication.³

[3] The 28-day period has now lapsed. The Authority has confirmation from Ms Gordon that Ms Bartlett does not intend to challenge the unsuccessful application for non-publication. In those circumstances the Authority has named Ms Bartlett in this determination.

Remedies

[4] Remedies were awarded to Ms Bartlett for reimbursement of wages in the sum of \$1,447.80 gross together with interest in the sum of \$64.51, reimbursement of lost wages in the sum of \$11,804.00 gross and \$30,000.00 for compensation. A penalty payable to the Crown was also awarded.⁴

Costs

[5] The Authority reserved the issue of costs in its determination.⁵ Submissions directed to costs have been lodged on behalf of Ms Bartlett and on behalf of Larson-Juhl New Zealand Limited (Larson-Juhl).

The applicant's submissions

[6] Ms Gordon refers to the principles in the Employment Court judgment in *PBO Limited (formerly Rush Security Ltd v Da Cruz)* and the basic tenets set out in that judgment for the Authority when considering costs.⁶

[7] Ms Gordon set out that the daily tariff at the time of the investigation meeting was \$4,500 for a matter that took one day at the Authority.

[8] Ms Gordon submits that there should be an uplift in costs because of a without prejudice save as to costs offer made to Larson-Juhl on 19 April 2023 to settle the matter for the sum of \$15,000 under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act) and \$2,000 with GST for a contribution to costs. The offer was stipulated to

³ Above n 1 at [7].

⁴ Above n 1 at [85] to [109].

⁵ Above n 1 at [112] – [114].

⁶ *PBO Ltd v Da Cruz* [2005] ERNZ 808.

remain open until close of business 3 May 2023 at which point it was to be withdrawn and the Authority advised that the matter would proceed to a hearing.

[9] The offer was not accepted. Ms Gordon seeks on behalf of Ms Bartlett an uplift in costs and a costs award in the sum of \$9,500.00 together with the lodgement fee of \$71.56.

Submissions from the respondent

[10] Mr Mathews on behalf of Larson-Juhl accepts that the daily tariff should be applied but submits the matter took three-quarters of a day. He acknowledges the Calderbank offer is worthy of an uplift but that should be \$1,000.00.

[11] Mr Mathews submits that \$3,375.00 would be an appropriate amount to award.

Analysis and conclusions

[12] The Authority recorded the meeting commenced at 9.30 am and concluded at 4 pm after evidence and submissions.

[13] An appropriate starting point for an assessment of costs is the daily tariff for one day of \$4,500.

[14] There was an offer on behalf of Ms Bartlett to resolve the matter in the nature of a Calderbank offer on 19 April 2023. The offer was made at an early stage after mediation and on the same day that Ms Bartlett stated her intention to resign with notice and raised a personal grievance for constructive dismissal. The offer remained open until 3 May 2023. On 5 May 2023 an amended statement of problem was lodged which included an employment relationship problem of unjustified constructive dismissal.

[15] The Authority needs to assess the offer at the time it was made and not with the benefit of hindsight.

[16] The nature of Ms Bartlett's claim at the time of the Calderbank offer had changed. The statement of problem before the Authority at that point concerned problems whilst the relationship was still on foot and had not been amended although there was an indication it would be if the offer was not accepted.

[17] In those circumstances at the time the offer was made Larson-Juhl was not as well placed to assess the merits of Ms Bartlett's claim and the potential risk in declining

the offer. Looking back now had the offer been accepted it would have meant the parties did not incur the expenditure of costs from that point. At the time however when the offer was made the Authority cannot safely conclude it was unreasonably rejected because of the change indicated to the shape of the case.

[18] The awards made by the Authority far exceeded the offer to settle and that was largely because of the change in the nature of the case. In *PBO* there was analysis of offers to settle with the awards made before they were taken into account in the costs award. The offers and the awards made by the Authority considered in *PBO* were reasonably similar.⁷

[19] The Authority is tasked with exercising its discretion as to costs in a principled way. I am not satisfied that an adjustment should be made in the circumstances to the daily tariff starting pointed because of the Calderbank offer for the reason set out above.

[20] Larson-Juhl is ordered to pay to Ada Bartlett the sum of \$4,500 being costs and reimbursement of the filing fee of \$71.56.

Helen Doyle
Member of the Employment Relations Authority

⁷ Above n 6 at [50], [51], [52],[59] and [60].