

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 185
5433506

BETWEEN CRAIG PAUL CARDWELL
Applicant

A N D ROB GOLD BUILDERS
LIMITED
Respondent

Member of Authority: TG Tetitaha

Representatives: A Reid, Counsel for Applicant
G Bennett, Counsel for Respondent

Submissions: 5 February 2014 from Applicant
None from Respondent

Date of Determination: 14 May 2014

COSTS DETERMINATION OF THE AUTHORITY

A. Rob Gold Builders Limited is ordered to pay Craig Cardwell \$10,978.71 towards his legal costs.

Employment relationship problem

[1] The Authority in its substantive determination dated 23 January 2014¹ held that the applicant was owed wage arrears and had been unjustifiably disadvantaged by the non-payment of wages. The respondent was ordered to pay damages of \$1,000 and wage arrears of \$4,436.88.

[2] The applicant now applies to have the costs he has incurred to date reimbursed to a reasonable degree so he may be returned to a position close to where he would have been had the respondent not failed to pay all of his wages when they were due and consequently unjustifiably disadvantaged him in his employment. His actual costs were \$14,844.46 plus disbursements of \$8,732.21.

¹ [2014] NZERA Auckland 25

Issues

[3] The following issues are to be determined:

- a. What is the starting point for assessing costs?
- b. Are there any factors that warrant adjusting the notional daily tariff?

What is the starting point for assessing costs?

[4] The correct approach to assessing costs in this matter is for the Authority to adopt its usual notional daily tariff based approach to costs.² The current notional daily tariff is \$3,500. This matter involved a one day investigation meeting. The starting point for assessing costs is therefore \$3,500.

Are there any factors that warrant adjusting the notional daily tariff?

Factors which warrant a reduction in the notional daily tariff

[5] There are no factors that warrant any reduction in the notional daily tariff.

Factors which warrant an increase to the notional daily tariff

[6] The applicant accepts the Authority's tariff based approach to costs would be largely reasonable in this case subject to the Authority ordering a contribution towards the applicant's disbursements.

[7] The applicant's disbursements encompass the costs of an expert witness, namely an accountant. His evidence was necessary due to the state of the wage and leave records. The accountant crosschecked the applicant's bank accounts with the wage and leave record to calculate the wage arrears owed. The evidence greatly assisted the determination of the amount of wage arrears owed. The accountant's invoices total \$7,407.15. He also seeks recovery of the Authority's filing of \$71.56. Both disbursements appear reasonable. The total disbursements sought are \$7,478.71.

² *Mattingly v Strata Title Management Ltd* [2014] NZEMPC 15 at [16]

[8] Rob Gold Builders Limited is ordered to pay Craig Cardwell \$10,978.71 towards his legal costs.

TG Tetitaha
Member of the Employment Relations Authority