New Zealand Employment Relations Authority Decisions

Crush v Southern District Health Board (Christchurch) [2017] NZERA 1176; [2017] NZERA Christchurch 176 (13 October 2017)

Last Updated: 29 October 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2017] NZERA Christchurch 176
5539675

BETWEEN KATE CRUSH Applicant

A N D SOUTHERN DISTRICT HEALTH BOARD Respondent

Member of Authority: David Appleton

Representatives: Tim Castle, Counsel for Applicant

Janet Copeland & Jess Frame, Co-Counsel for Respondent

Submissions Received: 21 July, 3 & 17 August, 2 October 2017 from Applicant

2 & 18 August and 11 October 2017 from Respondent

Date of Determination: 13 October 2017

COSTS DETERMINATION OF THE AUTHORITY

The respondent is to make a contribution to the applicant's costs in the GST inclusive sum of $16,100, together with a further sum of $2,460.42 in respect of reimbursement of disbursements.

[1] By way of a determination dated 6 July 20171, the Authority found that Ms Crush had been unjustifiably disadvantaged by the manner in which a preliminary investigation had been carried out into complaints she had made about a colleague, and was awarded $6,000 pursuant to s 123(1)(c)(i) of the Employment Relations Act

2000 (the Act).

[2] The Authority found that it did not have the jurisdiction to investigate the

second and third stages of the respondent's investigation into Ms Crush's complaint

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as no sufficiently specific personal grievance had been raised in respect of them. The Authority also found that the respondent did not act in bad faith in declining to grant further special paid leave to the applicant.

[3] Costs were reserved, and the parties urged to seek to agree how they should be dealt with. The parties have been unable to do so. Both parties, unusually, sought a hearing on costs. However, as the Authority was (eventually) fully informed on all matters pertinent to the fixing of costs, and it was not necessary to hear any evidence in relation to fixing costs, I declined to set down a meeting for determining costs, as such an approach would have caused more costs to be incurred, including by

the Authority, as travel and possibly overnight accommodation would have been necessary. Costs have therefore been determined by consideration of detailed written submissions.

[4] There is a somewhat involved history to the proceedings in this matter that need to be traversed. Ms Crush's statement of problem was lodged with the Authority on 15 September 2015. The respondent sought further particulars of Ms Crush's application before being obliged to respond. The Authority directed Ms Crush to do so, and these were provided on 15 October 2015. The statement in reply was lodged on 6 November 2015. A substantive investigation was set down for 10 and 11 May

2016.

[5] The parties attended mediation on 16 April 2016, and Ms Crush, through her counsel, subsequently alleged that statements made by the respondent were not made as part of the mediation, and wished to bring before the Authority evidence of these statements made. A direction was made prohibiting this on the grounds of inadmissibility, and Mr Castle, on behalf of Ms Crush, then applied for removal to the Employment Court the question of whether the statements he wished to be before the Authority had to be kept confidential. Consequently, the substantive investigation meeting set down for 10 and 11 May 2016 had to be adjourned. The Authority declined to remove the matter to the Employment Court in a determination dated

1 August 2016.2 The costs of that application were reserved.

[6] The investigation meeting of the substantive matter was then set down afresh, for 21 to 23 February 2017 in Queenstown. However, in late January 2017, Ms Crush

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made an application for the investigation meeting to be adjourned *sine die* on the basis that the Authority would be assisted in its investigation by evidence of how the respondent handled three complaints made against Ms Crush in early 2016 (significantly after the events which were the subject of the statement of problem). This application was declined.

[7] The Authority's investigation proceeded in February 2017, but a further two days' of investigation had to be convened to hear all of the evidence, and submissions. Those occurred on 20 and 21 June in Dunedin.

What the parties respectively seek

[8] Ms Crush had originally sought an award of costs of $4,500 for the first day of the Authority's meeting, together with a further $3,500 for the subsequent four days of investigation, plus disbursements (making a total of $18,500 plus disbursements). When her proposal, made via Mr Castle, to settle for this sum was rejected by the respondent, via Ms Copeland, Ms Crush then changed her position and sought "a full hearing and inquiry on costs", and the award of costs on an indemnity basis (or with an unspecified uplift on the daily tariff), plus disbursements.

[9] The respondent now seeks an award of costs on a full indemnity basis, amounting to $50,525, together with disbursements in the sum of $10,696.23, both sums inclusive of GST.

The parties' respective rationales

[10] Mr Castle relies on a number of factors to support his client's position on

costs:

(a) An offer to settle marked "without prejudice save as to costs" (the applicant's Calderbank offer) was made on behalf of Ms Crush to the respondent by way of a letter dated 8 March 2016. This offered to settle proceedings for $3,000 compensation pursuant to s 123(1)(c)(i) of the Act, plus reimbursement of two weeks' sick leave and a contribution to legal costs of $3,500 plus GST, disbursements and reimbursement of the lodgement fee. This was rejected by the respondent.

(b) A without prejudice offer made by Mr Castle in an open letter to Ms Copeland dated 29 April 2016 in which he repeated the offer made in the applicant's Calderbank offer made on 8 March 2016, but sought also for an agreement by the respondent to employ Ms Crush for a further .4FTE at the Lakes District Hospital, and for her FTEs in the area she was then currently working to cease. In addition, Mr Castle sought an agreement that the respondent would "withdraw[s] entirely its threats to find a way to terminate Ms Crush's employment..."

(c) Ms Crush was only seeking $6,000 in compensation in any event.

(d) Ms Crush was wholly successful, or at least sufficiently successful for the full amount of her claim to be awarded.

[11] In his submissions in reply, Mr Castle opened out matters by seeking an investigation meeting in which an application by Ms Crush would be determined to "lift the veil of confidentiality over the purported 'mediation meeting' of 14 April

2016". This was declined by the Authority on the basis that a separate application would need to be lodged by Ms Crush, and

that such an application was unrelated to costs.

[12] The respondent's submissions refer to the following matters and arguments:

(a) A letter dated 6 May 2016 marked 'without prejudice, except as to costs" (the respondent's Calderbank offer). Mr Pheroze Jagose (as he was then) made an offer of settlement on behalf of the respondent to Ms Crush via Mr Castle in the form of a draft record of settlement. This offered to pay Ms Crush an ex gratia sum3, together with $15,000 under s 123(1)(c)(i) of the Act and $5,000 plus GST towards Ms Crush's costs. However, agreement was dependent upon Ms Crush resigning her employment with the respondent.

(b) Ms Crush was only partially successful.

(c) The daily tariff of $4,500 for the first day of the investigation meeting only applies to applications lodged on or after 1 August 2016.

3 Which it is not necessary to specify

(d) Costs were unnecessarily incurred by Ms Crush by her:

i. lodging reply/rebuttal evidence which was not strictly in reply;

ii. making an unmeritorious application for removal;

iii. lodging an unsolicited fourth statement of evidence on 14 June

2017 which the respondent successfully objected to;

iv. not particularising her claim for reallocation of sick and annual leave;

v. adopting a "shifting sands" approach to prosecuting her claims.

(e) the second day of the investigation was not a full day of hearing (as the Authority encouraged the parties to seek to settle the matter after hearing evidence from one of the respondent's witnesses).

[13] In her memorandum in reply, Ms Frame on behalf of the respondent says that Mr Castle does not provide any evidence of Ms Crush's costs, or the disbursements incurred. She also says that the applicant's Calderbank offer was not beaten by Ms Crush, and so the respondent would not have been better off accepting the offer.

[14] As Mr Castle had, indeed, not provided any information about Ms Crush's

actual costs liability, I directed that this information be provided. It was, on

2 October. The respondent's reply objected strongly to the disbursements element of

the costs claimed. I will examine the disbursements claimed in detail below.

Discussion

[15] The Authority's power to award costs is set out in paragraph 15 of Schedule 2

of the Act, which provides as follows:

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.

[16] Both counsel referred to the very well-known principles which the Authority must take into account when determining how legal costs and expenses should be dealt with, and which are set out in *PBO Ltd v. Da Cruz4*, confirmed as still appropriate by the full court in *Fagotti v Acme & Co Limited5*. These principles include the following:

(a) There is discretion as to whether costs would be awarded and in what amount.

(b) The discretion is to be exercised in accordance with principle and not arbitrarily.

(c) The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.

(d) Equity and good conscience are to be considered on a case by case basis.

(e) Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.

(f) It is open to the Authority to consider whether all or any of the parties'

costs were unnecessary or unreasonable. (g) That costs generally follow the event.

(h) That without prejudice offers can be taken into account. (i) That awards will be modest.

(j) That frequently costs are judged against a notional daily rate.

(k) The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain

circumstances.

4 [2005] NZEmpC 144; [2005] 1 ERNZ 808

5 [2015] NZEmpC 135

[17] *Ogilvie & Mather (NZ) Ltd v. Darroch* 6sets out the two principal criteria that must be satisfied when a *Calderbank* offer is made so as to not prejudice unfairly the recipient of the offer by exerting undue pressure. These safeguards are as follows:

(a) A modicum of time for calm reflection and the taking of advice before a decision has to be made to accept the offer or reject it; and

(b) The offer must be transparent if the offeror is later to be given the protection the *Calderbank* offer furnishes.

[18] The relevant principles as to Calderbank offers were summarised by the Court of Appeal in *Blue Star Print Group (NZ) v Mitchell7*:

[19] We accept that there may be cases where vindication through seeking a statement of principle in the employment context may be relevant to the exercise of the Court's discretion. Thus the relevance of reputational factors means that costs assessments are not confined solely to economic considerations. But equally, an offer to pay compensation at a level that is reasonable might well be regarded as conveying a distinct element of vindication to the plaintiff.

[20] We consider that the potential for vindication to be a relevant factor does not mean that the developed jurisprudence under the High Court Rules costs regime should be ignored. We reject Mr Churchman's submission that the principles applicable to Calderbank offers should be adjusted or ignored in employment cases merely because of the nature of the employment relationship and because employees may in certain cases be motivated in part by the desire for vindication. As this Court has previously said a "steely" approach is required. It has been repeatedly emphasised that the scarce resources of the Courts should not be burdened by litigants who choose to reject reasonable settlement offers, proceed with litigation and then fail to achieve any more than was previously offered. Where defendants have acted reasonably in such circumstances, they should not be further penalised by an award of costs in favour of the plaintiff in the absence of compelling countervailing factors. The importance of Calderbank offers is emphasised by reg 68(1). It is the only factor relevant to the conduct of the parties specifically identified as having relevance to the issue of costs.

[19] The Employment Court stated in *Mattingly v Strata Title Management*

*Limited*8:

6 [1993] NZEmpC 172; [1993] 2 ERNZ 943

7 [2010] NZCA 385, [2010] ERNZ 446, (footnotes omitted).

8 [2014] NZEmpC 15; [2014] ERNZ 1, (footnotes omitted).

[27] Where an offer of settlement has been made by a party to litigation and the other party unreasonably rejects that offer that should be taken into account in assessing costs. That is because costs have been wasted going to trial. This principle has been endorsed by the Court of Appeal as appropriate in assessing costs in litigation in the Employment Court and that a "steely approach" ought to be adopted. No such statement of approval has yet been made by the Court of Appeal in relation to the assessment of costs in the Authority. It may be that a somewhat diluted approach is appropriate in that forum having regard to the statutory imperatives identified above, and in light of the Court's observation in *Da Cruz* that Authority awards would be "modest". What is clear, however, is that the effect of an offer is ultimately at the discretion of the Authority, and

the Court on a de novo challenge, having regard to the circumstances of a particular case.

[20] In *Fagotti*, a full Court confirmed that the remarks of the Court of Appeal about a "steely" approach to Calderbank offers expressed in *Bluestar Print Group* applies to the Authority's first instance jurisdiction.9

Which was the successful party?

[21] Ms Crush was, as Mr Castle expressed it, partially successful but was awarded the full amount sought by her. This was because she sought only a modest amount of compensation. Ms Crush did not succeed in arguing that she had raised valid personal grievances in respect of the second and third stages of the respondent's investigation into her complaint although that was a finely balanced argument. However, had she done so, I would have found that the final stage was flawed because of the approach taken by the investigators. She cannot be criticised for having sought to have argued that.

[22] Ms Crush also did not succeed in having her sick leave and annual leave restored. This was a more speculative claim, which had little real prospect of success.

[23] Overall, I am satisfied that Ms Crush was largely successful in her application, and that she is entitled to an award of costs.

9 At [109].

The Applicant's Calderbank Offer

[24] There are two Calderbank offers to consider10. The first is the Applicant's Calderbank offer. This was transparent. It offered a full and final settlement in return for a specified sum under s 123(1)(c)(i) of the Act, two weeks' sick pay (which could be easily calculated) and a contribution towards costs in specified amounts.

[25] It did not spell out what the consequences of declining the offer would be, but it was marked "without prejudice save as to costs" and was addressed to Ms Copeland, who is very experienced counsel. She would have been fully aware of the potential consequences of her client not accepting it, and would (or should) have explained that to her client.

[26] It also does not set out a time limit for acceptance. However, that does not render the offer flawed, or inoperative, as it was ostensibly open ended, and did not put undue pressure on the respondent to accept it.

[27] Did Ms Crush fail to beat it? I find that she did not so fail. She sought $3,000 in compensation, and was awarded $6,000. The two weeks sick pay that she was seeking in the Calderbank would not have amounted to more than the balance of

$3,000.

[28] The respondent suggests that costs have to be included when assessing whether Ms Crush beat the Calderbank offer. However, it is not appropriate to include the costs element of a Calderbank when assessing whether it has been beaten if the offeror's costs incurred after the Authority's investigation are not also weighed in the balance. This is what I understand the Employment Court to have been saying in *Rodkiss v Carter Holt Harvey Limited11.*

[29] As the respondent failed to accept the offer to settle contained in Ms Crush's Calderbank offer of 8 March 2016, both she and the respondent have had to incur the costs of five days of investigation meeting. Ms Crush will now recover much more

than the $3,000 in costs she sought in the Calderbank. Therefore, the amounts sought

10 Although, arguably, an offer to settle on a without prejudice save as to costs basis made by an applicant is not technically a Calderbank offer, it is appropriate to consider it as having the same broad effect in this jurisdiction and it is convenient to call it a Calderbank offer for ease of reference.

11 [2015] NZEmpC 147, at [35]-[36]

in her Calderbank offer have been exceeded and the respondent would have been better off if it had accepted the applicant's Calderbank offer.

[30] My conclusion is that the applicant's Calderbank offer was valid and operative.

[31] Was the respondent unreasonable in rejecting it? The reason for the rejection has not been divulged by the respondent. However, I infer from the respondent's Calderbank offer that the applicant's Calderbank offer was rejected because of the respondent's desire for Ms Crush to resign her employment. Was that a reasonable reason to reject Ms Crush's offer? I find not. This is because Ms Crush resigning her employment was not an outcome that could ever have resulted directly from the Authority's investigation process. What the respondent was doing was seeking to piggy back on the Authority's process to achieve an unrelated outcome.

[32] Therefore, I cannot find that the respondent's rejection of the applicant's

Calderbank offer was reasonable.

The respondent's Calderbank offer

[33] I do not regard that Ms Crush's rejection of this offer was unreasonable, as the offer required Ms Crush's resignation before she would receive the payments promised. Ms Crush believed that she had a valid grievance, and she should not have been expected to have also resigned in order to settle her grievance.

[34] I do not suggest here that it is improper to make a without prejudice offer to an employee which includes their resignation as part for the settlement package (although it does carry risk in terms of the future relationship if the offer is rejected) but such an offer strains the concept of a Calderbank offer, as it introduces an element which an employee can only rarely be deemed to be unreasonable in rejecting.

Conclusion

[35] I conclude that the applicant's Calderbank offer dated 8 March 2016 was reasonable, and that the respondent was not reasonable in rejecting it. This means that Ms Crush is entitled to an uplift in the daily tariff.

[36] The investigation meeting took five days. Whilst the first day started late, due to travel issues, it ended late as well. The second day was taken up partly by without prejudice discussions between the parties, but I regard those as part of the Authority's proceedings, even though the Authority did not take part in them, as they occurred at the direction of the Authority. The third and fourth days of investigation were full days, whereas the fifth day was half a day. Around half of the fourth day was spent in investigating the claim for the reinstatement of Ms Crush's sick and annual leave entitlements.

[37] This means that the starting point is $3,500 per day for days 1 to 412, plus

$1,750 for the fifth day. That equates to $15,750. I believe that $1,750 should be deducted from this starting point, as Ms Crush was not successful in her claim for reinstatement of her sick and annual leave entitlements. That leaves a starting point of

$14,000.

[38] Mr Castle has produced two invoices relating to his costs amounting to

$43,500 plus GST. The narrative on the first invoice, for $11,000 plus GST, is not

detailed but it seems to relate to "interim urgent attendances" carried out between

29 April and 6 May 2016. It is not clear on the face of the invoice whether these attendances related to preparation for the investigation meeting that was due to take place on 10 and 11 May 2016, or to the matter of the statement made during mediation which Ms Crush sought to bring before the Authority.

[39] I note from the Authority's file that Mr Castle lodged with the Authority an application for removal to the Court on that question dated 6 May 2016. I therefore infer that this invoice covering what was obviously a short period of intense work by Mr Castle related to that abortive application for removal. I therefore decline to take it into account.

[40] The second invoice, dated 18 August 2017, contains a narrative which has an incorrect date in it (referring, as it does, to an October 2017 case management directions teleconference). It also refers to the adjournment application which was unsuccessful. It also includes the cost of preparing the costs submissions. As such, this invoice cannot wholly refer to admissible costs relating to Ms Crush's successful

claim. It is not possible to know how much of the invoice does relate to the

12 I agree with Ms Frame that the first day attracts a tariff of $3,500, not $4,500, as the statement of problem was lodged before 1 August 2016.

successful claim, but I shall estimate that 75% of it does. That would result in a GST

exclusive sum of $24,375.

[41] The starting point based upon the daily tariff is $14,000, as stated above. Should the cost be uplifted to $24,375 on the basis of the Calderbank offer? That would be a 74% increase. I believe that that would be excessive given that the respondent is a publically funded body. I believe that an acceptable increase would be

25% in view of the reasonable offer made in the original Calderbank presented on behalf of Ms Crush which was unreasonably rejected by the respondent. That means that the GST exclusive costs amount to $17,500.

[42] Should GST be added? The recent Employment Court case of *Judea Tavern Limited v Patricia Jesson13* makes clear that the GST registration status of the successful party is a material factor in determining whether or not the addition of GST to a

costs award is appropriate. It also makes clear that this principle applies in the Authority when it is fixing a costs award. I take it that Ms Crush is not GST registered, so I do include an additional 15% to the $17,500. This results in an additional $2,625, making a total of $20,125.

Should the uplifted figure be reduced?

[43] I am mindful that there were some steps taken by Ms Crush in the proceedings which were unsuccessful, and which caused the respondent to incur costs. These were, adopting the respondent's terminology in part:

i. lodging reply/rebuttal evidence which was not strictly in reply;

ii. making an unmeritorious application for removal;

iii. lodging an unsolicited fourth statement of evidence on 14 June

2017 which the respondent successfully objected to;

iv. not particularising her claim for reallocation of sick and annual leave;

v. adopting a "shifting sands" approach to prosecuting her claims;

and

13 [2017] NZEmpC 120

vi. seeking an adjournment *sine die*.

[44] Not all of these steps were major ones and not all merit a reduction in costs. However, I believe that the first three matters, and the sixth, do merit a reduction. Whilst Ms Frame has helpfully included detailed copy invoices with narratives, they are not sufficiently detailed to enable me to calculate exactly what has been incurred by the respondent in dealing with these matters.

[45] In the absence of such information, I shall adopt a percentage approach. I believe that it is appropriate to reduce the uplifted costs by 20%. This results in costs of $16,100, including GST.

What reimbursement of disbursements is Ms Crush entitled to?

[46] First, I accept Ms Copeland's point that it is not usual for the travel and accommodation costs of out of town counsel to be paid, a position that has been established in a number of cases. However, that position does not apply when there are very few counsel available locally of comparable experience.14 Whilst not wishing to disparage in any way any employment law specialist based in Queenstown, Mr Castle has many decades of experience which is not easily matched in

Queenstown. There are some firms with offices in Queenstown with notable employment law practitioners, but many of those employment law specialists tend to be based out of town in any event (such as Lane Neave and Cavell Leitch).

[47] In addition, even if counsel from Queenstown had been engaged by Ms Crush, it was agreed by the parties that the final two days of the investigation meeting would take place in Dunedin, so some travel would still have been necessary. Finally, the respondent had also engaged out of town counsel, Mr Jagose, Ms Copeland and Ms Frame all being themselves based other than in Queenstown. On balance, therefore, I believe that Mr Castle's reasonable travel and accommodation costs can be recovered. However, I do not accept many of the disbursements claimed.

Counsel's accommodation at the Hilton, Queenstown

[48] Mr Castle incurred $1,000 for two nights' accommodation at the Hilton in

Queenstown on 21 and 22 February 2017. This is excessive, and far exceeds my own

14 I refer, for example, to *Fox v Hereworth School Trust Board* [2016] NZEmpC 39, at [52]

accommodation costs for the same period. I reduce this by 50%. I also decline to allow the $19 he claims for wine on 21 February, and the $19.40 credit card surcharge, which has been charged on the entire bill, which included costs incurred by Mr Castle's partner I believe. I accept the other disbursements claimed for that period. They equate to $571 in total.

Travel disbursements on 7/8 June 2017

[49] Mr Castle claims taxi fares of $130 which he says are travel disbursements on

7 and 8 June 2017. However, he has provided copy receipts of taxi fares incurred in Queenstown in June 2016. There was no investigation meeting on those days, and I infer that he has either made a mistake, or Mr Castle was visiting his client. If the latter, I do not believe that this was expenditure which the respondent should pay for, as attendance could have been effected

by telephone. I am mindful that the respondent is a publically funded entity.

Airfares incurred on 7 and 8 June 2017

[50] Mr Castle also claims $422.25 in relation to airfares purportedly incurred on

7 and 8 June 2017. However, the accompanying invoice refers to travel between Wellington and Auckland on 7 June 2016. Even if the destination is incorrectly stated on the invoice, again, there was no investigation meeting in June 2016, and so, again, I assume this is an error or it relates to Mr Castle visiting his client in Queenstown. I decline to award this for the same reason explained above.

Accommodation in Dunedin 20 June 2017

[51] I accept this, which amounts to $179. He also claims $9.50, as 'travel' but it appears to have been incidentals relating to his stay in Dunedin. As it is not clear what these incidentals were, I decline to award them.

Ms Crush's travel to Wellington.

[52] Apparently Ms Crush travelled to Wellington on 8 October 2016 to confer with counsel, at the cost of $511. I decline to award this disbursement. As before, attendance could have been effected by telephone.

[53] Ms Crush was invoiced a total of $1,379.97 by the Ministry of Business, Innovation and Employment for the investigation hearing fees for days 2 to 5, plus half a day in Wellington on 26 July 2016 for the unsuccessful removal application.

[54] First, I deduct $153.33 from the total in relation to the removal hearing, which results in $1,226.64. However, at least a further day was spent on investigating the unsuccessful claims relating to the second and third stages of the respondent's investigation, and the claim relating to special paid leave. I therefore deduct a further

$306.66. This results in an allowable claim of $919.98. To this I add the $71.56 lodgement fee that Ms Crush incurred.

Copy documents

[55] There is a disbursement of $47.92 for "copy documents". However, there is no detail of what the documents were, nor how the change has been arrived at (i.e., the charge per page). Therefore, I decline this claim.

Accommodation costs of Richard Crush and Michaela Ryan.

[56] This is a claim for $3,638.78 relating to the accommodation costs of a partner (Ms Crush's father) and a solicitor from the firm instructing Mr Castle so they could attend the investigation hearing in Queenstown in February 2017. First, the case was not a complex one, and it was completely unnecessary for a partner to be attending the investigation meeting. I feel sure that, if he were not Ms Crush's father, he would not have done so.

[57] Second, it is not a requirement in New Zealand for barristers to have their instructing solicitor present at the Authority's investigation meetings. Third, while Ms Ryan was no doubt of assistance to Mr Castle in taking notes, it was not strictly necessary. The case was not so complex that detailed note taking was essential. Indeed, counsel and advocates often attend the Authority's investigation meetings and take their own notes. Authority members also always take their own notes.

[58] I therefore decline to award these disbursements.

[59] For the reasons explained above, I decline to award anything for Ms Ryan's travel costs. However, I accept that it was necessary for Ms Crush to attend the investigation meeting in Dunedin, and so I award the sum of $405.88 claimed.

Mr Castle's flight cost to Dunedin

[60] I accept Mr Castle's flight cost to Dunedin on 20 June 2017. That amounted

to $313.00.

Mr Castle's travel and meals in Queenstown

[61] Mr Castle claims half of the costs he says he incurred at the Queenstown investigation meeting in February 2017 of $803.80; namely, $401.90. However, I note that all of the supporting receipts refer to costs incurred in Queenstown in June

2016. They are therefore irrelevant and, whilst they add up to $803.80, that is obviously not what Mr Castle incurred in Queenstown in February 2017. I therefore disallow the whole of that claim.

Secretarial costs

[62] Mr Castle has included invoices for "word processing" which amount to

$1,743.75. I note that one of the invoices relates to work carried out in May 2016. That would probably relate to the unsuccessful removal application. In any event, I am not satisfied that it is reasonable to charge the respondent for secretarial services. Most modern practitioners now do their own typing. I therefore disallow that expense.

Mr Castle's air fare to Queenstown in February 2017

[63] Mr Castle does not know how much he incurred, as he has mislaid the invoice, so I cannot award anything in respect of this expenditure.

Total disbursements allowed

[64] The allowed disbursements amount to a total of $2,460.42.

[65] I order the respondent to make a contribution towards Ms Crush's costs in the sum of $16,100, together with a further $2,460.42 in relation to disbursements. These payments are be made within 14 days of the date of this determination.

David Appleton

Member of the Employment Relations Authority

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