

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI Ā TARA ROHE**

[2024] NZERA 569  
3211040

BETWEEN	SAM DELAHUNTY Applicant
AND	JOHN WILSON ENGINEERING LIMITED Respondent

Member of Authority: Sarah Kennedy-Martin  
Representatives: Alex Kersjes, advocate for the Applicant  
Submissions received: 10 July 2023 from Applicant  
Determination: 25 September 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 7 June 2024 Sam Delahunty was successful with his personal grievance claim that he was unjustifiably dismissed by John Wilson Engineering Limited (JWE).<sup>1</sup>

[2] The Authority reserved the issue of costs. Mr Delahunty now seeks costs. There have been no submissions or communications with the Authority from JWE. The submissions on costs from Mr Delahunty were served on the registered address for service on the Companies Officer Register for John Wilson Engineering Limited.

**Costs**

[3] Costs are a matter of discretion. The discretion is to be exercised in accordance with principle and not arbitrarily. The main principle in the exercise of the discretion is that costs follow the event. If a party is successful, they will be entitled to an award

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<sup>1</sup> *Delahunty v John Wilson Engineering Limited* [2024] NZERA 330.

of costs. Mr Delahunty was successful with his claims set out in the statement of problem.

[4] The starting point for costs based on the Authority's daily tariff is \$4,500.00 for the first day. After adopting an appropriate starting point the Authority can consider whether there are factors justifying an increase or decrease in costs.

### **Submissions from Mr Delahunty**

[5] Submissions on Mr Delahunty's behalf adopt a starting point of \$2,250.00 which represents a half day investigation meeting. An uplift is sought for two Calderbank offers seeking to resolve the matter. Both offers were made in 2023, well ahead of the investigation meeting and JWE would have been in a better position had it accepted those offers.

[6] An uplift is also sought because JWE's lack of engagement frustrated the Authority's process unreasonably and increased Mr Delahunty's costs. Additional case management conferences were required to timetable evidence and set down dates because JWE did not respond. No wage and holiday records were provided necessitating additional work in calculating arrears. A costs award of \$7,000.00 is submitted to be appropriate.

[7] There are no submissions from JWE to consider.

### **Costs award**

[8] The Authority's investigation meeting was held by AVL and amounted to a half day. Had JWE attended the investigation meeting would have likely taken a full day. With no response from JWE, Mr Delahunty's representative was still required to prepare for cross examination of JWE's witnesses, so I accept costs were incurred by Mr Delahunty in preparing and attending the investigation meeting.

[9] The starting point for a half day based on the notional daily tariff is \$2,250.00. I consider that a small uplift is justified. The Calderbank offers cannot be taken into account because they do not clearly state they were intended to be Calderbank offers and that they would be provided to the Authority for the purposes of costs should JWE be unsuccessful in justifying its actions.

[10] However, JWE's failure to participate in the Authority's investigation led to increased time involved in progressing Mr Delahunty's claim which I accept has increased the cost of Mr Delahunty's representation.

[11] With no response from JWE, preparation for the investigation meeting still had to be undertaken and Mr Delahunty was the successful party. He is entitled to an award of legal costs. I consider an award for costs in the amount of \$3,500.00 plus the filing fee in the Authority is appropriate.

### **Orders**

[12] I order JWE to pay an award of costs to Sam Delahunty in the amount of \$3,500.00 and the filing fee of \$71.55.

Sarah Kennedy-Martin  
Member of the Employment Relations Authority