

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 575
3151183

BETWEEN EZEKIEL DIXON
 Applicant

AND WARRIOR NZ LIMITED
 Respondent

Member of Authority: Claire English

Representatives: Kristen Westwood, advocate for the Applicant
 No appearance for the Respondent

Submissions received: 12 October 2022 from Applicant
 No response from Respondent

Determination: 4 November 2022

COSTS DETERMINATION OF THE AUTHORITY

[1] On 28 September 2022, the Authority issued a determination in this matter, finding that the applicant had been unjustifiably dismissed, and awarding lost wages and a compensatory payment in his favour.

[2] In that determination, the parties were encouraged to resolve any issue of costs between them. The parties have not been able to resolve costs between themselves, and the applicant has filed a memorandum accordingly.

[3] The applicant submits that the starting point for an award of costs is the usual daily tariff, and as the investigation meeting lasted for half a day, the starting point is the sum of \$2,250. The applicant seeks an uplift, being a total award of costs of \$5,000. This is sought on two grounds, first, that the respondent's conduct was "most unreasonable", and second that

the respondent rejected a Calderbank offer to resolve the matter for the sum of \$6,000, which was significantly less than the total of more than \$15,000 awarded to the applicant by the Authority.

[4] The applicant has also made application for disbursements, in the sum of \$162.54.

[5] The respondent has been provided with a copy of the applicant's memorandum as to costs, and has not responded to it even though time has been allowed for this to occur. I record that the respondent is represented, and their representative participated in the case management conference, however, the respondent later advised in writing that it did not intend to attend the investigation meeting, and in the event, did not do so.

Principles

[6] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which states:

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.

[7] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*¹ as confirmed in *Fagotti v Acme and Co Limited*². The relevant principles set out in the above cases may be summarised as follows:

- a. Costs follow the event;
- b. Costs are to be modest.
- c. Quantification is to be with a view to a reasonable contribution to costs actually and reasonably incurred;

¹ [2005] 1 ERNZ 808.

² [2015] NZEmpC 135 at 114.

- d. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful parties' conduct.

[8] In this matter, the applicant was the successful party. Costs should therefore follow the event. The Authority's daily tariff is \$4,500 for the first day of an investigation meeting. The investigation meeting in this matter lasted for half a day, including legal submissions from the applicant's representative. The starting point for an award of costs is therefore half of the daily tariff, or \$2,250.

[9] I have also considered whether there should be an uplift from this starting point. I accept that the respondent's decision not to further participate in the process by its failure to attend the investigation meeting, did increase the burden on the applicant to some degree, as the applicant needed to respond to the wide-ranging allegations made by the respondent in its statement in reply. I also note the impact of the Calderbank offer, which was clearly a pragmatic offer made by the applicant, and for much less than the amount awarded by the Authority.

[10] Weighing these matters, my view is that a modest uplift would be appropriate. In my view, this is the equivalent of the full daily tariff, of \$4,500.

[11] The applicant has also provided an invoice in support of his claim for disbursements incurred, which include the payment of the filing fee, as well as printing and stationary costs. The amount claimed is both actual and reasonable. An award for disbursements is made accordingly.

Orders

[12] Warrior NZ Limited is to pay to Ezekiel Dixon the sums of:

- a. \$4,500 without deduction, being a contribution to costs; and
- b. \$162.54 without deduction, being an amount for disbursements incurred.