

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 184  
5399831

BETWEEN

HAMDI ELFEIL  
Applicant

A N D

SOUTH PACIFIC MEATS  
LIMITED  
Respondent

Member of Authority: M B Loftus

Representatives: Sarah McKenzie, Counsel for Applicant  
Rachel Webster, Counsel for Respondent

Submissions Received: 20 October 2014 from Applicant  
29 October 2014 from Respondent

Date of Determination: 12 November 2014

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 20 February 2014 I issued a determination concluding Mr Elfeil had been unjustifiably disadvantaged. Costs were reserved.

[2] Normally the Authority will use a daily tariff approach when addressing a costs claim (refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808). The normal starting point is \$3,500 per day and from there adjustment may be made depending on the circumstances.

[3] Mr Elfeil spent a little over \$11,000. He seeks a contribution of \$7,000 plus disbursements of \$448.21. It is submitted that \$4,000 of this is in respect of work performed after a Calderbank offer made on 30 January 2014, with the remainder relating to prior work. The Calderbank proposed a settlement comprising \$10,000 lost wages, \$2,000 compensation and \$4,000 costs.

[4] The determination gave Mr Elfeil just over \$9,300 in wages and \$4,000 compensation. The numbers are not dissimilar to those he sought.

[5] South Pacific suggest its contribution should not exceed \$4,375 which is a similar sum to that it offered post determination when the parties were trying to settle the issue of costs. South Pacific supports its position with some convoluted mathematics and an argument its offer effectively includes a significant increase on the daily tariff as the investigation meeting was concluded by lunchtime and the tariff is therefore only \$1,750. It is also argued the Calderbank should, in any event, be largely disregarded as it was not proffered in a timely manner.

[6] I find South Pacific's argument more persuasive. As it says the investigation took around half a day and the tariff would therefore be significantly less than \$3,500. Furthermore, and as South Pacific also argues, Calderbanks are designed to reduce avoidable costs. To do this they should be offered in a timely manner. This offer was appended to Mr Elfeil's reply evidence and proffered after the bulk of preparatory costs had been incurred. Furthermore I have no breakdown of costs and do not know whether or not Mr Elfeil's proposed pre/post Calderbank split reflects reality.

[7] Having considered the arguments and South Pacific's maths I conclude their suggestion, while was couched as a maximum, does reflect a significant increase in the tariff and was not unreasonable in the circumstances.

[8] There are then the disbursements - the cost of photocopying. Again I tend toward South Pacific's argument the claimed photocopying rate of 38.9 cents per page is excessive and prefer their suggested amount (\$301.96) which is based on 20 cents a page. It also includes the filing fee which was not claimed.

[9] For the above reasons I order the respondent, South Pacific Meats Limited, pay to the applicant, Hamdi Elfeil, the sum of \$4,676.96 (four thousand, six hundred and seventy six dollars and ninety six cents) as a contribution toward his costs.