

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2023] NZERA 43
3112053

BETWEEN	TRISH GALLIGAN Applicant
AND	PEOPLE MEDIA GROUP LIMITED Respondent

Member of Authority: Andrew Gane

Representatives: William Fussey, counsel for the Applicant
Ray Parmenter, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and other: 17 January 2023
material received:

Determination: 27 January 2023

AWARDS AND COSTS DETERMINATION OF THE AUTHORITY

Background

[1] In my determination dated 28 September 2022, I found Ms Galligan was entitled to be paid outstanding wages, outstanding holiday pay, interest on unpaid monies, and compensation from People Media Group Limited (PMG).¹

[2] At paragraph [47], I set out orders that included that the parties were to agree on calculations for reimbursement of three months lost wages and four weeks salary in lieu of notice. Leave was granted to return to the Authority to calculate such amounts failing agreement.

¹ *Galligan v People Media Group Ltd* [2022] NZERA 482.

[3] I also reserved costs and encouraged the parties to resolve any issues of costs between themselves.

[4] The parties have been unable to agree on calculations and have been unable to reach agreement regarding a contribution to costs.

[5] Ms Galligan has lodged a memorandum with the Authority providing calculation for reimbursement of lost wages and notice. She has also lodged an application for costs and submissions in support of her claim for an award of costs payable to her by PMG.

[6] PMG lodged submissions regarding the rate of calculation of reimbursement and notice and submissions on costs.

Reimbursement and notice period

[7] Ms Galligan submitted that the Authority's determination set out her minimum hours were from 9.30am to 3.30pm five days per week. Ms Galligan's minimum hours of work were therefore 30 hours per week.

[8] PMG's position is that the agreed hours, paid, were 27.5, hours per week and therefore the amounts should be calculated on the agreed rate.

[9] In paragraph 8 of my determination, I refer to Ms Galligan's minimum hours being from 9.30am to 3.30pm five days a week, totalling 30 hours per week.

Confirmation of calculations and orders

[10] The calculation for reimbursement and notice are therefore:

- (i) 3 months' lost wages = 13 weeks x 30 hours x \$32.50 = \$12,675 (gross);
and
- (ii) 4 weeks' notice period = 4 weeks x 30 hours x \$32.50 = \$3,900 (gross).

[11] Ms Galligan can recover interest on her entitlement to four weeks salary, payable in lieu of notice as set out in paragraph [43] of my determination from the date of dismissal, being 16 June 2020, until the date of payment.² The order for payment of

² *Galligan v People Media Group Ltd* [2022] NZERA 482.

interest is made under clause 11(1) of Schedule 2 of the Act. Interest is to be calculated by the PMG using the Civil Debt Interest Calculator.³

Claim for costs

[12] The Authority has a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.⁴ The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it. The investigation meeting in this matter was for one day and was held in person. Ms Galligan attended together with her representative and witnesses. PMG attended with its representative and witnesses.

[13] In the present case, Ms Galligan seeks payment of \$9,000 and the filing fee of \$71.56.

[14] PMG has submitted that any contribution for costs should be modest in the circumstances.

[15] The power of the Authority to award costs is contained in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). The principles and the approach adopted by the Authority in which an award of costs is made are settled.⁵

[16] PMG has not put forward any substantive argument as to why there should be a departure from the normal daily tariff rate.

[17] A general principle for a successful party is that costs should ‘follow the event’ and here Ms Galligan was successful and obtained significant remedies. As the successful party Ms Galligan is entitled to a contribution towards her costs, and as the unsuccessful party, PMG is liable to pay them.

[18] Factors to consider next are matters which would lead to an increase or decrease from the tariff. That offer contained an analysis of Ms Galligan’s case and I accept the offer constituted an effective *Calderbank* offer. The amount of the settlement offer was

³ <http://www.justice.govt.nz/finances/civil-debt-interest-calculator>.

⁴ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs.

⁵ Awarding remedies and costs | Employment Relations Authority (era.govt.nz).

in the vicinity of the amount I awarded, however, had PMG accepted that offer, it would have been in a better position now as Ms Galligan's costs would not have been incurred.

[19] On 23 July 2021 Ms Galligan's representative made a *Calderbank* offer to PMG. The email is clearly marked "Without prejudice save as to costs" and was made before substantial costs were incurred in preparation for, and attendance at, the investigation meeting and allowed sufficient time for consideration and acceptance of the offer. Ms Galligan offered to settle this matter for payment of outstanding salary, compensation and a contribution to costs.

[20] I am not persuaded the facts of this matter are so unusual or novel that it was reasonable to reject the offer. In these circumstances, I am persuaded that the PMG's rejection of a reasonable offer warrants a modest uplift from what would otherwise have been awarded in costs.

[21] Accordingly, I find that PMG is to pay to Ms Galligan the sum of \$4,500 towards costs, with a \$1,000 uplift to reflect the *Calderbank* offer, together with the filing fee of \$71.56 within 14 days of this determination.

Orders

[22] PMG is ordered to pay a contribution to costs of Ms Gilligan within 14 days of the date of this determination:

(iii) \$5,500 in costs;

(iv) \$71.56 being the Authority filing fee.

Andrew Gane
Member of the Employment Relations Authority