

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 245
3106372

BETWEEN

RA'ED HADDAD
Applicant

AND

NEW ZEALAND STEEL
LIMITED
Respondent

Member of Authority: Marija Urlich

Representatives: S M Laphorne and M Chen, counsel for the Applicant
C Pearce, counsel for the Respondent

Investigation Meeting: On the papers

Determination: 10 June 2021

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination on 16 March 2021 which found Mr Haddad was unjustifiably dismissed by New Zealand Steel Limited (NZS) and awarded remedies in his favour of reinstatement, reimbursement lost wages and compensation for non-economic loss.¹ The issue of costs was reserved and a timetable set for filing memoranda if the parties were unable to resolve costs themselves.² Mr Haddad now applies for a costs award in its favour.

Mr Haddad's claim for costs

[2] Mr Haddad seeks a contribution to costs of \$20,000. Submissions filed on his behalf include reference to the general principles applicable to the exercise of the

¹ *Ra'ed Haddad v New Zealand Steel Limited* [2021] NZERA 106.

² The timetable was varied after hearing from the parties.

Authority's discretion in relation to costs including that costs follow the event, costs are not a punishment or expression of disapproval although conduct which increases costs can be taken into account, the Authority may consider whether costs incurred are reasonable or necessary and costs are frequently judged against a notional daily rate.

[3] Mr Haddad's legal costs are \$59,235 plus GST and disbursements of \$115.00. He says an uplift in the usual daily tariff is warranted given the complexity of the case and issues for consideration in respect of remedies.

[4] In his affidavit dated 11 May 2021 Mr Haddad avers that he did not agree to costs at the daily tariff rate. He says he agreed to payment at that rate on the understanding he would be reinstated to a position in accordance with the Authority determination.

New Zealand Steel's response

[5] NZS submits firstly that the parties have agreed costs. Mr Haddad agreed with a representative of NZS to settle costs by application of the daily tariff rate of \$8,000 which was paid. It says Mr Haddad should be held to his bargain.

[6] In the alternative, NZS submits the tariff is appropriate and no uplift is warranted.

Have the parties agreed costs?

[7] As indicated to the parties this is the first issue for consideration.

[8] The contemporaneous email correspondence shows:

- Counsel agreed to settle costs at the daily tariff rate conditional on a suitable reinstatement role being available (refer email Mr Pearce to Ms Berry 7 April 2021);
- On 7 April Mr Haddad emailed Mike Smith at NZS including "According to the discussion Simon and Carter had 26/03/21, NZS accepts the legal cost – verbally agreed between them – and NZS is looking for options to offer me suitable positions coming back to work". I am satisfied Mr Haddad

understood settlement of costs as discussed between counsel was linked to his being offered a suitable role into which to be reinstated;

- On 8 April Ms Berry emailed Mr Haddad providing reinstatement options for him to consider, recognising he needed time to consider them and advising he would be reinstated on the payroll 13 April. The email went on to ask Mr Haddad to confirm costs were settled at the daily tariff rate. The email did not state settlement as discussed between the lawyers was conditional on a suitable reinstatement option being agreed;
- At 1.33pm on 9 April Mr Haddad replied to Ms Berry providing the information she needed to get him back onto the payroll. He wrote “I confirm that I agree to the normal tariff rate \$4500 for the first day and \$3500 for the second day of the legal cost.” In the same email Mr Haddad asked Ms Berry any future contact with him should be direct because he sought to keep costs down;
- At 1.46pm on 9 April he again wrote to Ms Berry, copying Mr Laphorne and Mr Pearce “Confirming that I have agreed to New Zealand Steel paying the Authority’s normal daily tariff rate ie \$4,500 for the first day and \$3,500 for the second day of the investigation meeting.”;
- On 10 April Mr Laphorne emailed Ms Berry to progress the reinstatement discussions and on 12 and 13 April he attempted to contact Mr Pearce to discuss costs mindful of the Authority timetable;
- On 13 April NZS paid Mr Haddad the agreed costs; and
- Also on 13 April NZS lodged a challenge in the Employment Court. It was also the last day for costs submissions to be filed and Mr Haddad emailed the Authority at 3.06pm that day seeking an extension to file costs memoranda.

[9] Costs have been agreed and settled between the parties. I am satisfied on 9 April Mr Haddad accepted NZS’s offer to settle costs at the daily tariff rate. I am satisfied he was aware of the condition on costs settlement discussed between the lawyers, that subsequently he has taken over costs settlement discussions directly with NZS and has agreed and settled costs without condition which have been paid.

[10] I have considered whether an award of costs at a rate higher than that agreed by the parties would have been warranted. Applying the usual principles to the circumstances of this matter I am satisfied it would not:

- high actual costs would not itself usually support an uplift;
- considerable hearing time was taken by Mr Haddad's claim his redundancy was a sham which he abandoned on day two of the investigation hearing.
- any uplift based on filing written closing submissions would likely be negated by the preparation and hearing time taken to deal with the claim of sham; and
- that some hundreds of pages of documents are filed in evidence or that submissions are lengthy is not an unusual feature of matters before the Authority.

Marija Urlich
Member of the Employment Relations Authority