

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 53
3150501

BETWEEN	JIMIN HONG Applicant
AND	S&C CENTREPLACE LIMITED Respondent

Member of Authority:	Sarah Blick
Representatives:	Dave Cain, advocate for the applicant Daniela Proske for the respondent
Investigation meeting:	On the papers
Submissions or information received:	15 November 2022 from the applicant 29 November 2022 from the respondent
Determination:	3 February 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] I issued a determination on 1 November 2022 finding the applicant Ms Hong was unjustifiably disadvantaged and dismissed. I awarded \$14,000 in compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).¹ I also ordered the respondent S&C Centreplace Limited (S&C) to pay unpaid wages and sick leave pay totalling \$349.66.

[2] The parties have been unable to resolve the issue of costs between themselves. Ms Hong has applied for an award of costs.

¹ *Hong and S&C Centreplace Limited* [2022] NZERA 565.

Costs principles

[3] The Authority's power to award costs is set out in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). The power is discretionary with its use governed by principles.² These include that costs will usually follow the event and the discretion is exercised in accordance with principle and not arbitrarily, considering equity and good conscience. When considering costs, the starting point is the Authority's daily tariff of \$4,500 for the first day of an investigation meeting.

Parties' positions on costs

[4] Ms Hong seeks an award of costs of \$6,500 plus disbursements of \$211.56.

[5] Ms Hong asks for the Authority's usual daily tariff for a one-day investigation meeting, being \$4,500. She also seeks an uplift of \$2,000. Ms Hong says S&C's conduct in this matter was unreasonable, repeated attempts to resolve the matter were made which were unsuccessful, and S&C's behaviour caused unnecessary delay in the Authority's investigation which had an impact on cost.

[6] Ms Hong also says she sent an effective Calderbank offer to S&C on 4 May 2022. The emailed offer says it was made on a "without prejudice save as to costs" Calderbank basis, and that should the Authority's investigation meeting have the expected result, Ms Hong would apply to the Authority for an uplift in costs above the daily tariff of \$4,500. The offer anticipated costs to be in the vicinity of \$8-\$10,000. The offer was to accept a sum of \$5,000 as compensation, costs in the sum of \$2,750 plus GST, "receive the termination to a resignation" and a certificate of service to resolve the matter. The offer expired on 11 May 2022. Ms Hong says this was a reasonable and pragmatic offer which should have been accepted given S&C had clear failings as a fair and reasonable employer and the risk to S&C was most evident.

[7] Ms Hong says her costs relating to this matter total \$8,250 which includes the disbursements amount.

[8] S&C has not meaningfully responded to the costs application apart from forwarding an email it sent to Ms Hong's advocate on 29 November 2022. In that email S&C said it was repeating an offer to make instalment payments to Ms Hong for what

² *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

it owed her, it was struggling with its business and owed a lot of debt. S&C attached an exported bank statement and outstanding rent invoices to demonstrate its parlous financial position.

Costs assessment

[9] Ms Hong was the successful party and is entitled to a contribution to her costs.

[10] The notional daily tariff is the starting point, namely \$4,500, as the investigation meeting took a full day.

[11] I am satisfied Ms Hong's offer was an effective Calderbank offer and an uplift to the daily tariff is appropriate. It was for an amount substantially less the amounts I awarded in my determination, was made at a time sufficiently in advance of the filing of evidence and was open for a reasonable time. I award an uplift of \$1,000.

[12] I am not otherwise satisfied S&C's behaviour caused unnecessary delay in the Authority's investigation of the matter, nor am I satisfied on the information before me that its behaviour increased costs.

[13] The Authority has not been provided with a breakdown or invoices in support of Ms Hong's claim for disbursements. In any event, the global approach envisaged by the tariff is considered to include amounts such as for photocopying and printing. I therefore decline to order any disbursements.

[14] It is appropriate to award reimbursement of the Authority filing fee.

Conclusion

[15] S&C Centreplace Limited is ordered to pay \$5,500 in costs and \$71.56 (being the Authority filing fee) to Jimin Hong within 28 days of the date of this determination.