

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 120
3167463

BETWEEN

CODY JOYCE
Applicant

AND

ULTIMATE SITEWORKS
LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Lawrence Anderson, advocate for the Applicant
Danny Gelb, advocate for the Respondent

Costs submissions received: 16 February 2023

Determination: 8 March 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority investigated and determined an employment relationship problem in which the applicant and the respondent both were a protagonist party to a greater or lesser extent. Mr Joyce sought to have the Authority determine that he was unjustifiably dismissed and should be awarded compensation and reimbursed lost wages. Ultimate Siteworks Ltd (USL) sought to establish that Mr Joyce had, without authorisation, retained possession of items of its property and had misused diesel fuel paid for by his employer. USL sought an accounting for the value of the items and fuel to be offset against monies awarded, in the event Mr Joyce was held to be entitled to any.

[2] The bilateral nature of the employment relationship problem was plainly and clearly identified and demarcated in the statement of problem and statement in reply. With that information at hand, the Authority convened an investigation meeting to

discharge its statutory role¹ of establishing the facts and making a determination according to the substantial merits of the case.

[3] The Authority determined that Mr Joyce was not dismissed but left the employment of his own free will. He therefore had no personal grievance of unjustified dismissal or any other kind. On that basis it did not become necessary to consider offsetting any amounts in recognition of USL's claims, as USL's condition for doing so was not fulfilled.

[4] Written submissions have been received from the parties on the question of costs, reserved by the Authority in its determination.

[5] USL seeks Authority tariff costs of \$4,500 for a one-day investigation meeting, uplifted by \$3,000 on account of a Calderbank offer USL submits was unreasonably declined by Mr Joyce.

[6] Mr Joyce submits that total costs should be no more than \$2,250. He notes that should a challenge made to the Court succeed, the Authority's costs determination will be set aside.

[7] The law to be applied by the Authority in determining costs has been traversed by the Employment Court in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*².

[8] Costs are not awarded as punishment or to express disapproval of a party's conduct. Their purpose is to compensate a party who or which has incurred expense in applying to the Authority, to have it investigate and determine claims and cross claims such as those presented by Mr Joyce and USL. The amount of costs will usually be modest, and they will usually be awarded to the party which is successful in the outcome of the Authority's investigation.

[9] The Authority has a discretion to award costs based on a daily tariff, which it fixes from time to time and publicises. Currently the tariff is \$4,500 for the first day and \$3,500 for each following day of an investigation meeting.

[10] The Authority is satisfied that the substantial part of one full day was reasonably required for presentation, through several witnesses, of a diverse range of factual

¹ Employment Relations Act 2000, section 157(1)

² [2005] ERNZ 808

matters. They included, as well as the circumstances of Mr Joyce's employment by USL and departure therefrom, new employment after leaving USL and the disappearance of a quantity of diesel from a holding tank mounted on his work truck. Written submissions were also required to be prepared after the investigation meeting.

[11] The Authority agrees with USL that the one-day tariff should be uplifted because of the settlement offer USL made to Mr Joyce and which he declined. That offer was \$1,500 in compensation and \$1,500 in contribution to his costs. Mr Joyce decided to carry on and was unsuccessful. His decision caused USL to incur the additional cost of the investigation meeting and submissions.

[12] The settlement offer was on the light side if it was going to receive the full consideration of Mr Joyce and be weighed against the alternative to settlement. The uplift should be \$1,250.

[13] The uplift should apply to the full amount of the day-one tariff, \$4,500, giving a total award of \$5,750.

[14] The Authority is satisfied that the costs awarded do not exceed actual costs disclosed by USL, which are considerably more. USL has been invoiced for those costs. It is no concern of the Authority or Mr Joyce who bankrolls the company.

[15] USL is therefore to be paid \$5,750 by Mr Joyce as a reasonable contribution towards the costs of its representation, pursuant to clause 15 of the Second Schedule to the Employment Relations Act 2000.

Alastair Dumbleton
Member of the Employment Relations Authority