

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2023] NZERA 757
3137200

BETWEEN SIMARJIT KAUR
Applicant

AND KAITERITERI PROPERTIES
LIMITED
Respondent

Member of Authority: Antoinette Baker

Representatives: Heather Collins, counsel for Applicant
Anjela Sharma, counsel for Respondent

Submissions received: 10 November 2023 from Applicant
24 November 2023 from Respondent

Determination: 18 December 2023

COSTS DETERMINATION OF THE AUTHORITY

Costs

[1] In a determination dated 2 October 2023,¹ I found that the respondent (KPL) had unjustifiably dismissed Ms Kaur and ordered compensation of \$6,000.00 and lost earnings of \$9,120.00 gross. Ms Kaur's claims of disadvantage and wage arrears were dismissed.

¹ *Kaur v Kaiteriteri Properties Limited* [2023] NZERA 571.

[2] Ms Kaur seeks \$8,000.00 as a contribution for her legal costs based on the Authority tariff for a two-day investigation meeting.

[3] KPL submits that costs should lie where they fell due to Ms Kaur's mixed success and because she did not reasonably entertain attempts by KPL to settle her claim, holding onto significantly higher amounts than what she eventually was awarded in my determination. In the alternative, KPL submits that the Authority should lower the tariff amount proportionately in any award of costs for the same reasons.

[4] The Authority has the discretionary power to award costs.² The approach adopted by the Authority³ includes that a party should receive a reasonable contribution to costs incurred in achieving a successful result. Costs are discretionary, modest, and are not a mechanism to punish the other party. Some cases may require costs to lie where they fall.

[5] The starting point is the Authority's daily tariff which is \$4,500.00 for the first full investigation meeting day and \$3,500.00 for any subsequent days. This matter took two days, which is \$8,000.00. Both parties were represented by legal counsel. Ms Kaur was successful in part of her claim. The issue of mixed success has been considered as to costs in the Authority in the Employment Court. The Court decided that any success for an applicant is sufficient success for the purpose of costs, and it does not matter that an applicant may have lost a significantly larger or more complex claim if it was successful with any claim.⁴

[6] I find that the starting point for considering Ms Kaur's application for a contribution towards costs for Ms Kaur is \$8,000.00.

[7] Each party submits that the other caused delays in relation to resolving this matter. I find this a likely neutral point. For KPL it is submitted that Ms Kaur caused 'significant

² Employment Relations Act 2000, Schedule 2, clause 15.

³ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

⁴ *Coomer v JA McCallum & Son Ltd* [2017] NZEmpC 156.

protraction with the timetable' referring me to an extension of time for Ms Kaur to lodge and serve an additional witness statement prior to the investigation meeting. I am not persuaded this caused significant delay.

[8] It is further submitted that Ms Kaur unrealistically held to a significant amount to settle, 'well beyond what she was awarded.'

[9] While there were Calderbank offers that were rejected by Ms Kaur, the offers by KPL were less than the outcome Ms Kaur received. It is submitted for Ms Kaur that these offers are not a relevant factor. I agree.

[10] It is submitted for KPL that Ms Kaur was unrealistic in her claim, particularly for wage arrears, that this took KPL time to respond to, and that this evidence was a focus of the investigation meeting. The Employment Court when considering the situation where an applicant was unsuccessful in part of his claim that took much of the investigation meeting has said that 'success, limited as it was, could not have been achieved without lodging a claim in the Authority.'⁵ When considering this, I find it remains appropriate to award the tariff for a two-day investigation meeting as a contribution to Ms Kaur's costs.

[11] Accordingly, Kaiteriteri Properties Limited is to pay Simarjit Kaur \$8,000.00 as a contribution to her costs within 28 days from the date of this determination.

Antoinette Baker
Member of the Employment Relations Authority

⁵ Above at [43].