

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 226  
3229219

BETWEEN                      ADRIAN LAWRENCE  
   Applicant  
  
AND                                WAI-WEST HORTICULTURE  
   LIMITED  
   Respondent

Member of Authority:        Philip Cheyne  
  
Representatives:                Simon Pankhurst, advocate for the Applicant  
   Sarah Moon, counsel for the Respondent  
  
Submissions Received:        11 April 2024 from the Applicant  
   25 March 2024 from the Respondent  
  
Date of Determination:        19 April 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In an earlier determination,<sup>1</sup> I dismissed Mr Lawrence’s claims against his former employer Wai-West Horticulture Limited (WWH). Costs were reserved. I have now received submissions from both parties.

[2]     This determination resolves costs.

**Application of principles**

[3]     The Authority has a discretion to order a party to pay such costs to any other party as the Authority thinks reasonable. The discretion must be exercised in accordance with principle.

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<sup>1</sup> *Lawrence v Wai-West Horticulture Limited* 2024 NZERA 143.

[4] A successful party who incurs legal costs is usually entitled to a contribution to those costs from the unsuccessful party. WWH incurred legal costs and was successful. It is entitled to costs.

*Notional daily tariff approach*

[5] The Authority often fixes costs by reference to its notional daily tariff of \$4,500.00 for the first day and \$3,500.00 for each subsequent day. The approach is consistent with a modest approach to costs in the Authority and has the advantage of certainty.

[6] The submissions for Mr Lawrence do not directly address the application of the daily tariff, but he accepts that he is liable for costs. Mr Lawrence has estimated the cost of compiling documents, wage costs incurred by WWH for its witnesses (time and travel) and the cost of counsel for a day. These estimates lead him to say that costs of about \$3,300.00 should be ordered. That is less than the notional tariff for the first day.

[7] The investigation meeting was scheduled for two days because the dismissal resulted from broad inquiries covering circumstances over a period of time. The employer's inquiries had involved a number of people and generated a reasonably substantial file of material. However, the Authority's investigation was able to be completed in a little under one day. Initial submissions were made during the investigation meeting. Some further information was provided later at my request and both sides followed with submissions on the further information.

[8] Nothing about this sequence suggests that costs should be less than the daily tariff for the first day. I am not persuaded that I should adopt the approach urged by Mr Lawrence, given it would amount to a reduction of the daily tariff.

[9] WWH seeks an uplift in costs for two reasons.

*Calderbank offer*

[10] On 2 October 2023 WWH offered to settle Mr Lawrence's claim on the basis that it would not pursue him for costs if he withdrew his claim, to be formalised as a record of settlement under s 149 of the Employment Relations Act 2000. Mr Lawrence was given a reasonable time to agree to the offer, but did not.

[11] The offer was without prejudice except as to costs. It was made after the case management conference but well before witness statements were to be lodged. WWH said it had a strong defence to the claims; it faced costs for preparation; in the unlikely event that Mr Lawrence succeeded, compensation would be significantly reduced because of his contribution; that Mr Lawrence should be prepared for significant cross-examination; and that WWH would enforce a costs order in its favour if need be.

[12] The “walk-away” offer by WWH amounted to a nil offer.<sup>2</sup> Formalising it in a record of settlement would also have created the potential for enforcement action against Mr Lawrence under s 149 of the Employment Relations Act 2000. Mr Lawrence did not act unreasonably in not accepting the offer.

[13] WWH is entitled to costs as the successful party but not to an uplift based on non-acceptance of its “walk-away” offer.

*Failure to comply with directions*

[14] Mr Lawrence was directed to confirm whether his correspondence set out all the grounds for his personal grievance, to quantify the claim for lost remuneration and to confer with WWH’s counsel through his representative to provide an agreed bundle of documents.

[15] Mr Lawrence did not respond on the first point, provided some material but no calculations on the second point and was of little assistance on the third point.

[16] WWH says these (in)actions made WWH’s preparation for the investigation meeting “significantly” more costly. However, WWH did not quantify that or provide invoices in support.

[17] I do not accept that Mr Lawrence’s (in)actions unnecessarily increased WWH’s costs.

[18] WWH dismissed Mr Lawrence. To justify that decision, it needed to produce the documents it had relied on during its disciplinary investigation and present the material in an orderly fashion for the Authority. Mr Lawrence’s lack of contribution to document management was immaterial.

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<sup>2</sup> *Baker v ST John Regional Trust Board* [2013] NZEmpC 109 at [10] – [13].

[19] Mr Lawrence gave evidence largely as foreshadowed in the correspondence raising his personal grievance. The failure to comply with the Authority's direction made little difference to the extent of WWH's reply. The same point applies to the limited response regarding quantification of the reimbursement claim.

[20] The points raised do not warrant an uplift from the notional daily tariff.

**Summary and orders**

[21] WWH is entitled to costs, fixed in accordance with the standard daily tariff approach for one day.

[22] Adrian Lawrence is to pay Wai-West Horticulture Limited costs of \$4,500.00 within 28 days of the date of this determination.

Philip Cheyne  
Member of the Employment Relations Authority