

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 116
3284899

BETWEEN LITA MAIAVA-PEREZ
Applicant

AND JASMINE TANGOHAU
Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Alex Kersjes, advocate for the Applicant
No appearance for the Respondent

Submissions Received: 13 January 2025 from the Applicant
No submissions from the Respondent

Date of Determination: 25 February 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 16 December 2024 the Authority upheld Ms Perez’s personal grievance claims, finding that her dismissal was unjustified. Costs were reserved, with the parties being encouraged to resolve any issue of costs between themselves. The parties have been unable to do this and accordingly a determination is necessary.

Costs principles

[2] Clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) gives the Authority the discretion to order any party to a matter to pay costs to another party such costs and expenses as the Authority thinks reasonable.

[3] The unsuccessful party will usually have to contribute to the costs of the successful party. The Authority adopts a daily tariff approach to costs. The daily tariff sets a starting point from which relevant factors and principles may guide an upward or

downward adjustment of the amount of costs awarded. The current tariff for costs is \$4,500.00 for the first day of any matter and \$3,500.00 for any further days.

[4] Relevant principles governing costs in the Authority include consideration of whether the conduct of the parties increased costs unnecessarily, warranting an adjustment up or down, without compromising the Authority's otherwise modest approach to costs.

[5] Costs should not be used to punish a party or express disapproval of an unsuccessful party's conduct.

The applicant's submission

[6] The investigation meeting took half a day, which sets the starting point for the daily tariff at \$2,250.00. Ms Perez seeks an uplift of costs on the following basis:

- (a) Ms Tangohau declined a valid and operative Calderbank offer some five months prior to the investigation meeting.
- (b) Ms Tangohau demonstrated bad faith behaviour throughout which complicated the matter, including a failure to attend to ERA directions, defamatory social media posts, multiple aggressive emails and a general frustration in the investigation process. It is submitted on behalf of Ms Perez that her advocate spent considerable time managing this conduct, which increased costs significantly.

[7] Total costs incurred were \$17,919.56 (including a disbursement of \$71.56). The applicant submits that a costs award, given all the factors, should be \$8,000.00 plus disbursements.

[8] On 3 April 2024, Ms Tangohau was sent an offer headed "without prejudice save as to costs". This followed mediation. Whilst it is true, certainly with the benefit of hindsight, Ms Tangohau would have been better off to have accepted the offer put forward. It was less than the amount ultimately awarded by the Authority. However, the difficulty with the offer was that it remained open for acceptance only until 5pm on Tuesday 9 April 2024. The offer provided that it could not be accepted after that date.

[9] The 3rd of April was a Wednesday. The 9th of April was a Tuesday. Realistically, therefore, Ms Tangohau would have had four working days at the most to

consider the offer, including taking any legal advice she may have wished to have done. Whilst the offer to settle was less than ultimately awarded by the Authority it was nonetheless a significant sum. Under the circumstances, an uplift in the daily tariff is not warranted by Ms Tangohau's rejection (or at least non-acceptance) of the offer.

[10] It is fair to say that Ms Tangohau's approach to the investigation meeting included derogative emails and posts online. However, Ms Tangohau did nothing to extend the time of the investigation meeting and did not delay the Authority's investigation.

[11] For the above reasons I see no reason to depart from the notional daily tariff.

Orders

[12] Ms Tangohau is ordered, within 28 days from the date of this determination, to pay Ms Perez a sum of \$2250.00 plus a disbursement of \$71,56 on account of costs.

Geoff O'Sullivan
Member of the Employment Relations Authority