

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 573
3164161

BETWEEN JOHN MCCOLLUM
Applicant

AND ANNEX GROUP LIMITED
Respondent

Member of Authority: Andrew Gane

Representatives: Rachael Webster counsel for the Applicant
Simon Greening, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and other: 29 August 2023 from the Applicant
material received: No submissions from the Respondent

Date of Determination: 2 October 2023

COSTS DETERMINATION OF THE AUTHORITY

Background

[1] By determination dated 18 August 2023, I found John McCollum was unjustifiably disadvantaged and unjustifiably dismissed by Annex Group Ltd (AGL).¹ I reserved costs and encouraged the parties to resolve any issues of costs between themselves.

[2] The parties have been unable to resolve costs. Mr McCollum's representative provided submissions in support of Mr McCollum's claim for an award of costs payable to Mr McCollum by AGL. These submissions have been served on AGL, who has not responded.

[3] Mr McCollum seeks payment of \$10,350 in costs and reimbursement of the \$199.29 for disbursements, including the lodging fee.

¹ [2023] NZERA Hamilton 459

Analysis

Costs in the Authority

[4] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Employment Relations Act 2000. The principles and the approach adopted by the Authority in which an award of costs is made are settled.²

Costs follow the event

[5] I find there is no reason to depart from the usual principle that a successful party is entitled to a contribution towards their representation costs.

Application of the daily tariff

[6] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500.00 for the first day of hearing, and \$3,500.00 for subsequent hearing days.

[7] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[8] AGL has not put forward any argument as to why there should be a departure from the normal daily tariff rate of \$4,500.00 for the day of hearing. I find no reason to depart from using the daily tariff and that, therefore is the basis of the award of costs.

[9] The investigation meeting in this matter was for one day. The parties attended together with their representatives and other witnesses.

Calderbank offers

[10] Factors to consider next are matters which would lead to an increase or decrease from the tariff. In this regard, Mr McCollum has made three Calderbank offers, which are relevant.

[11] On 12 December 2021 Mr McCollum's representative made a *Calderbank* offer to AGL. The letter is marked "Without prejudice save as to costs." That offer contained

² For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

an analysis of Mr McCollum's case and I accept the offer constituted an effective *Calderbank* offer. A second *Calderbank* offer was made by email on 6 December 2022 and a third *Calderbank* offer was made by email on 3 May 2023.

[12] Mr McCollum offered to settle this matter for payment of outstanding salary, compensation and a contribution to costs for an amount significantly less to what was awarded.

[13] Had AGL accepted that offer, it would have been in a better position now and Mr McCollum's costs would not have been incurred.

[14] Two of the offers were made well before substantial costs would have been incurred in preparation and allowed sufficient time for consideration and acceptance of the offer. I am not persuaded the facts of this matter are so unusual or novel that it was reasonable to reject the offer. In these circumstances, I am persuaded that the AGL's rejection of a reasonable offer warrants a substantial uplift from what would otherwise have been awarded in costs.

[15] Mr McCollum has requested \$199.29 for disbursements. Mr McCollum can recover the cost of his lodging fee, however, the request for further disbursements is not allowed.

[16] Accordingly, I find that AGL is to pay to Mr McCollum the sum of \$4,500 towards costs, with a \$2,000 uplift to reflect the *Calderbank* offers, together with the lodging fee of \$71.56 within 14 days of this determination.

Conclusion

[17] Mr McCollum was the successful party and is entitled to receive an award of costs. This means Mr McCollum is entitled to an award of costs of \$6,500.00 and reimbursement of the \$71.55 lodging fee.

Orders

[18] Accordingly, I order AGL to pay to Mr McCollum the sum of \$6,571.55 towards costs within 14 days of this determination.

Andrew Gane
Member of the Employment Relations Authority