

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2012] NZERA Wellington 163  
5357538

BETWEEN            RAMI ODISHO  
                                 Applicant  
  
AND                    LA BELLA ITALIA  
                                 DISTRIBUTORS LIMITED  
                                 Respondent

Member of Authority:            G J Wood  
  
Representatives:                 A Hill for the Applicant  
   P Cheng and C Mosley for the Respondent  
  
Investigation Meeting:            By way of submissions received  
  
Submissions Received:            By 20 November 2012  
  
Determination:                    19 December 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In my substantive determination I concluded that Mr Odisho was an employee of the respondent (La Bella Italia). I found that Mr Odisho was not dismissed, but concluded that he was entitled to \$5,786.80 net in holiday pay, \$317.39 net in sick pay, \$293.40 net in unpaid statutory holiday leave and \$7,141.90 net for statutory holidays worked.

[2]     On behalf of Mr Odisho, Ms Hill sought costs above the usual tariff awarded for a one day case, which is \$3,500. In particular it was submitted that Mr Odisho's costs were reasonable and that he was prepared to compromise his claim for a figure less than the Authority's award excluding legal costs, unlike La Bella Italia.

[3]     On behalf of La Bella Italia it was submitted that Mr Odisho was unsuccessful in his claims for constructive dismissal and for a penalty. In fact La Bella Italia had breached the Act but it was determined that no monetary fine be awarded. In

particular, it was submitted that little time was spent on the issue of who the employer was, which determined the issues of holiday and other statutory pay owing upon which Mr Odisho was successful.

[4] It was also submitted that La Bella Italia offered to settle by payment of the statutory pay claims if Mr Odisho was successful. It therefore seeks a contribution towards its costs of \$26,992.70.

[5] This is not a case for La Bella Italia claiming costs against Mr Odisho. Its offers to settle by way of *Calderbank* offers were less than what the Authority awarded to Mr Odisho before costs were considered. Rather this is an appropriate case for Mr Odisho to seek costs from La Bella Italia, having succeeded in gaining more from the Authority, less costs, than offered by it.

[6] In the usual circumstances this would be a matter to be dealt with by the daily tariff of \$3,500. Although I accept La Bella Italia's submissions that some of the evidence on the day addressed the issue of whether there was any dismissal and whether it was justified, points on which Mr Odisho was unsuccessful, an analysis of time spent in evidence per issue is not a major factor in a tariff based system. Mr Odisho was obliged to come to the Authority to obtain the monies that he should have been paid at the end of his employment. There are no other factors militating against an award based on the daily tariff. I therefore order the respondent, La Bella Italia Distributors Ltd, to pay to the applicant, Mr Rami Odisho, the sum of \$3,500.00 in costs.

**G J Wood**  
**Member of the Employment Relations Authority**