

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 417
3161642

BETWEEN	ANTON ROMIRER Applicant
AND	TAUPO BREWERY LIMITED Respondent

Member of Authority:	Claire English
Representatives:	Anton Romirer in person Louise Foley, counsel for the Respondent
Submissions received:	4 June and 13 June 2024 from Applicant 31 May 2024 from Respondent
Determination:	12 July 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] On 16 May 2024, the Authority issued a determination in this matter, dismissing the applicant's claim for unpaid wages, holiday pay and Kiwisaver contributions in their entirety. No awards were made.

[2] In that determination, the parties were encouraged to resolve any issue of costs between them, and the Authority made reference to its usual practice of applying the daily tariff to determine costs. The parties have not been able to resolve costs between themselves, and have filed memoranda accordingly.

[3] The investigation meeting in this matter took place over four days, and was held in person. The applicant attended together with an assistant, and the director of the respondent company attended with her counsel.

[4] The respondent seeks costs against the applicant. It submits that the starting point should be the daily tariff, and that for a four-day investigation meeting, this equates to \$15,000.

[5] The respondent then asks for an uplift on this, for “increased or indemnity costs”, for a number of different reasons, including:

- a. That the applicant turned down a Calderbank offer that would have resulted in him being paid some \$13,700, as opposed to his complete lack of success in the Authority;
- b. The applicant’s behaviour at hearing including that many of his claims were untenable, his evidence was inconsistent or did not exist, and time was wasted due to what was described as the applicant’s “meandering” evidence; and
- c. The impact (on time and associated costs) of the applicant’s originally naming the director of the respondent as a respondent in her personal capacity but failing to progress this claim, and making a claim against the respondent of some “six figures” that he then conceded at hearing was “pie in the sky”.

[6] The applicant submitted that:

- a. the respondent’s application “should be voided” on the grounds that he had accepted the respondent’s offer to settle costs matters; and
- b. “I ask the Authority to propose how I could possible pay” and to consider “a payment plan perhaps¹”.

Principles

[7] Costs are to follow the event. In this instance, the respondent was wholly successful in defending the claims against it, and no findings or awards were made in favour of the applicant. The respondent is therefore entitled to an award of costs.

[8] When considering the amount of such an award, the Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and

¹ Applicant’s email to the Authority on 13 June 2024

the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days².

[9] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it. In this case, as the investigation meeting was held over four days, I find that the appropriate starting point is \$15,000.

[10] I must now consider whether an uplift is appropriate as contended for by the respondent.

[11] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*³ as confirmed in *Fagotti v Acme and Co Limited*⁴. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful parties conduct.

[12] The rejection of a Calderbank offer is a ground for an uplift in costs. I find that this is the case here, noting that acceptance of this offer would have enabled the parties to avoid four days of hearing, and plainly the applicant would have been in a significantly better position had he accepted the respondent's offer. On balance, I find that it is appropriate to award an uplift of \$1,500.

[13] I decline to award indemnity costs as requested by the respondent. These will rarely be appropriate, and the conduct of the applicant referred to by the respondent does not persuade me that this is such a case. Although the applicant's conduct appears to have caused much frustration to the respondent, I must also bear in mind that some of the conduct complained of such as the time spent reviewing documents and preparing witnesses, and that the applicant's claims were in the end found to be unsupported by the evidence, are a part of the process of litigation and have resulted in the applicant being liable for a costs award against him. The Authority is a tariff-based jurisdiction,

² For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

³ [2005] 1 ERNZ 808.

⁴ [2015] NZEmpC 135 at 114.

and costs awards are a contribution to costs incurred rather than a reimbursement of them. On balance, there is insufficient reason to alter this approach.

[14] I have also considered the applicant's submissions. He has essentially submitted that he has limited means, however, he has failed to provide any evidence to support this bald assertion. He has also referred to a payment plan "perhaps", but has not suggested what he considers a reasonable payment plan might be, and how or why it would help him to meet any costs award made against him. On the basis of a lack of supporting evidence and information, I decline to make any reduction to the costs awarded, or to order payment by instalments.

[15] The applicant has also suggested that the respondent's application for costs against him be voided, because he accepted an offer of settlement. The applicant has provided no evidence demonstrating that he accepted an offer of settlement of costs made by the respondent. The email correspondence he has provided shows that the respondent made an offer to settle costs, but no agreement was reached. There is no basis for me to decline to make an order of costs in favour of the respondent as the applicant suggests.

Orders

[16] Anton Romirer is ordered to pay to Taupo Brewery Limited within 28 days of the date of this determination the sum of \$16,500 (inclusive) as a contribution to costs.

Claire English
Member of the Employment Relations Authority