

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2023] NZERA 159
3153722

BETWEEN	JESSE STEFFERT Applicant
AND	PARKERS BEVERAGE COMPANY LIMITED Respondent

Member of Authority:	Rowan Anderson
Representatives:	Ruth Pettengell, advocate for the Applicant Doug Speedy for the Respondent
Investigation Meeting:	On the papers
Submissions received:	10 March 2023 from the Applicant 20 March 2023 from the Respondent
Determination:	29 March 2023

COSTS DETERMINATION OF THE AUTHORITY

Background and submissions

[1] On 27 February 2023 the Authority issued a determination in which I found that Jesse Steffert was not unjustifiably disadvantaged by the actions of Parkers Beverage Company Limited (PBCL) in suspending him from his employment, but that he was unjustifiably dismissed by PBCL.¹ In awarding remedies to Mr Steffert in relation to his successful unjustified dismissal claim, I ordered that the relevant remedies be reduced by 45% on account of contributory blameworthy conduct.

¹ *Steffert v Parkers Beverage Company Limited* [2023] NZERA 90.

[2] Costs were reserved. The parties have not been able to agree on costs, and Mr Steffert now asks the Authority for orders as to the costs he incurred in pursuing his claims. PBCL also claims it should be entitled to costs.

[3] Mr Steffert seeks a total contribution towards its costs of \$4,500 based on the tariff approach adopted by the Authority for a one-day investigation meeting. He also seeks reimbursement of the filing fee of \$71.56.

[4] Mr Steffert submits that he was successful in his substantive claim of unjustified dismissal and as such should be entitled to costs. Whilst no uplift to the daily tariff is sought, submissions were received as to attempts to settle the matter and matters relating to work required on account of an initial refusal to attend mediation by PBCL. Mr Steffert also says that PBCL should not be entitled to any costs.

[5] PBCL submits that it could not afford legal representation but that the matter has cost the business in excess of \$30,000. It says that it was successful in relation to several aspects of the proceedings, and it should be entitled to be reimbursed for the time, effort and energy spent on defending the claims.

Costs principles

[6] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.²

[7] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that Calderbank offers may be taken into account, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.³

[8] The daily tariff is usually taken as a starting point,⁴ although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

⁴ Practice Note 2: Costs in the Employment Relations Authority, issued 29 April 2022.

Consideration

[9] The substantive proceeding involved a one-day investigation meeting. An application of the daily tariff approach would see a contribution of \$4,500.

[10] Mr Steffert was successful in his claim of unjustified dismissal. However, PBCL were successful in defending Mr Steffert's claims as to unjustified disadvantage relating to his suspension from employment. The unjustified disadvantage claim involved a not insignificant amount of the time spent in preparing for, and attendance at, the investigation meeting.

[11] PBCL submitted that the Authority, at the investigation meeting on 28 September 2022 "...advised that costs were set at \$4,500 to BOTH parties. Regardless of whether it is from an outside source or self representation". That is not an accurate reflection of the statements made at the investigation meeting, which included reference to Practice Note 2: costs in the Employment Relations Authority.⁵ Regardless, Mr Steffert was successful in his primary claim, and I do not consider there a basis for an award of costs in favour of PBCL.

[12] In cases of mixed success, which is the case here, the Authority is to "stand back and look at things in the round".⁶ Whilst this is a case of mixed success, I consider Mr Steffert, having been successful with his primary claim of unjustified dismissal, is entitled to an award of costs. However, as that success was only partial, I consider a downward adjustment to the daily tariff is appropriate and find that a one-third reduction to the daily tariff is appropriate.

[13] It is also appropriate that Mr Steffert be reimbursed the filing fee of \$71.56.

Orders

[14] I order Parkers Beverage Company Limited to pay Mr Jesse Steffert the sum of \$3,000 as a contribution towards the costs he incurred in his claim.

[15] I further order that Parkers Beverage Company Limited are to pay Mr Steffert the sum of \$71.56 as reimbursement of the filing fee.

⁵ The directions issued on 25 May 2022 also contained reference to, and a link to, the practice note.

⁶ *Coomer v JA McCallum and Son Ltd* [2017] NZEmpC 156 at [43].

[16] Payment is to be made within 28 days of this determination.

Rowan Anderson
Member of the Employment Relations Authority