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Sturzaker v Ballance Agri-Nutrients Limited (Wellington) [2017] NZERA 2070; [2017] NZERA Wellington 70 (7 August 2017)

Last Updated: 17 August 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2017] NZERA Wellington 70
3000095

BETWEEN GARRY STURZAKER Applicant

AND BALLANCE AGRY-NUTRIENTS LIMITED

Respondent

Member of Authority: Rachel Larmer

Representatives: Simon Meikle, Counsel for Applicant

Gillian Service, Counsel for Respondent

Submissions: 27 July 2017 from Respondent

No submissions from Applicant

Date of Determination: 07 August 2017

COSTS DETERMINATION OF

THE EMPLOYMENT RELATIONS AUTHORITY

The employment relationship problem

[1] Ballance Agri-Nutrients Limited (Ballance) successfully defended

Mr Sturzaker's unjustified dismissal grievance claim.

[2] The parties were encouraged to resolve costs by agreement. However, in its substantive determination¹ the Authority set a timetable for costs submissions to be filed if the parties did not resolve costs by agreement.

[3] Ballance filed its costs submissions on 27 July 2017 so in accordance with paragraph [100] of the substantive determination,² Mr Sturzaker's costs submissions were due to have been filed on 03 August 2017. Mr Sturzaker did not file any costs

submissions so costs have been determined based on the information currently before the Authority.

Costs application

[4] Ballance seeks an award of costs of \$10,000 towards its actual legal costs which were far in excess of that amount. Ballance seeks that the Authority's notional daily tariff be uplifted by \$2,000 to reflect Mr Sturzaker's unreasonable rejection of a *Calderbank* settlement offer made prior to the Authority's investigation meeting.

Approach to costs

[5] The Authority adopts its usual notional daily tariff approach to costs. The starting point for assessing costs in this matter is \$8,000 (being \$4,500 for day one plus \$3,500 for day two of the investigation meeting) because this matter involved two full days of investigation meeting time.

[6] The Authority must then take a principled approach to considering whether or not the notional starting tariff of \$8,000 should be adjusted to reflect the particular circumstances of this case.

Factors warranting adjustment to tariff

[7] I am not aware of any factors which would warrant a reduction being made to the notional starting tariff and neither party has drawn any such factors to the Authority's attention.

[8] Ballance says its without prejudice save as to costs settlement offer (the *Calderbank* offer) to Mr Sturzaker on 01 June 2016 was unreasonably rejected by him. The *Calderbank* offer was made three weeks before the Authority's investigation meeting.

[9] Ballance says that is a factor that should result in the notional starting tariff being increased by \$2,000.

[10] If the *Calderbank* offer had been accepted by Mr Sturzaker he would have been better off than he was under the Authority's substantive determination. Both

parties would also have avoided the considerable additional legal costs associated with the two day investigation meeting.

[11] I consider this is an appropriate matter in which to uplift the notional starting tariff by \$2,000 to reflect Mr Sturzaker's unreasonable rejection of Ballance's without prejudice save as to costs offer.

[12] Accordingly, within 28 days of the date of this determination, Mr Sturzaker is ordered to pay Ballance \$10,000 towards its actual legal costs.

Rachel Larmer

Member of the Employment Relations Authority

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