

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 315
3163942

BETWEEN CHUN KIT SZE
Applicant

AND KNCC LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Simon Greening and Erin Drew, counsel for the
Applicant
Hiruni Wijewardhana and Melissa Johnston, counsel for
the Respondent

Investigation Meeting: On the papers

Submissions Received: 29 May 2023 from the Applicant
No submissions from the Respondent

Date of Determination: 16 June 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority issued its substantive determination in this matter on 15 May 2023.¹

[2] Mr Sze was entirely successful, as he succeeded with his wage arrears, breach of employment agreement, damages and unjustified dismissal claims against the Respondent KNCC Limited (“KNCC”).

[3] Because there had been ‘without prejudice except as to costs’ communications between the parties, a timetable was set for the parties to lodge costs submissions.

¹ *Sze v KNCC Ltd* [2023] NZERA 242.

The Authority's investigation

- [4] Costs have been determined 'on the papers'.
- [5] Mr Sze lodged costs submissions on 29 May 2023.
- [6] The Respondent did not engage with the Authority regarding costs.

Issues

- [7] The following issues are to be determined:
- (a) What is the notional starting point for assessing costs in this matter?
 - (b) Should the notional starting tariff be adjusted?
 - (c) What costs and disbursements should be awarded?

Relevant law

[8] The Authority derives its power to award costs from clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). Although costs are discretionary, a successful party will normally be required to contribute to the successful party's actual legal costs.

[9] The Authority usually adopts a notional daily tariff-based approach to assessing costs. The tariff for a one-day investigation meeting is currently \$4,500 and then \$3,500 for each subsequent day of investigation meeting times.

[10] The Employment Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz and Fagotti v Acme & Co Limited* set out costs principles that the Authority must have regard to when assessing costs.² These are so well known there is no need to set them out again here.

What is the notional starting point for assessing costs?

- [11] This matter involved a two hour investigation meeting.
- [12] The notional starting point for assessing costs is therefore \$1,500, which is pro-rata the \$4,500 notional daily tariff for the first day of an investigation meeting.

² [2005] ERNZ 808 and [2015] NZEmpC 135.

Should the notional starting tariff be adjusted?

[13] When assessing costs, the Authority is required to consider whether the notional starting tariff should be adjusted to reflect the particular circumstances of this matter.

[14] Mr Sze submitted that the notional starting tariff should be doubled. He sought a contribution of \$3,000 towards his actual legal costs.

[15] The Authority considers it appropriate to increase the notional daily tariff in this matter by \$1,500 to reflect that the Respondent's conduct unnecessarily increased the Applicant's actual costs. In particular;

- (a) The Respondent engaged in obstructive and delaying conduct that increased the Applicant's actual costs more than would normally be required in such a case. The details of such conduct are set out in paragraphs [25] to [43] of the substantive determination;³
- (b) The Applicant prepared for a full day investigation meeting, because the Respondent did not advise him sufficiently in advance of the investigation meeting that it would not be attending. He was apparently told after his full preparation had occurred; and
- (c) Half an hour of time was wasted on the day of the investigation meeting attempting to ascertain why the Respondent was not present.

[16] The Authority is not aware of any factors that should result in the notional daily tariff being decreased, so no decrease is appropriate.

What costs and disbursements should be awarded?

[17] Within 28 days of the date of this determination, KNCC is ordered to pay Mr Sze \$3,071.56 towards his costs and disbursements. This consists of \$3,000 towards his actual legal costs and \$71.56 to reimburse his filing fee.

Rachel Larmer
Member of the Employment Relations Authority

³ Above n1.