

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 3
3154425

BETWEEN KARL YOUNG
 Applicant

AND ECO PILE LIMITED
 Respondent

Member of Authority: Andrew Gane

Representatives: Daniel Church, counsel for the Applicant
 No appearance for the Respondent

Investigation Meeting: On the papers

Submissions and other: 12 October 2022
material received:

Determination: 6 January 2023

COSTS DETERMINATION OF THE AUTHORITY

Background

[1] In my determination dated 5 October 2022, I found that Mr Young was entitled to be paid outstanding wages, outstanding holiday pay, interest on unpaid monies, and compensation from Eco Pile Limited (Eco Pile). I reserved costs and encouraged the parties to resolve any issues of costs between themselves.

[2] The parties have been unable to do so. Mr Young has lodged an application for costs and submissions in support of his claim for an award of costs payable to him by Eco Pile. These submissions have been sent to Eco Pile.

[3] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first

day of hearing, and \$3,500 for subsequent hearing days.¹ The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it. The investigation meeting in this matter was for one day and was held in person. Mr Young attended together with his representative and witnesses. Eco Pile Limited declined to appear.

[4] In the present case, Mr Young seeks payment of \$11,000 and the filing fee of \$71.56.

[5] Eco Pile did not file a statement of reply, did not participate in the investigation meeting and has made no submissions in relation to costs.

Principles

[6] The power of the Authority to award costs is contained in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). The principles and the approach adopted by the Authority in which an award of costs is made are settled.²

[7] Eco Pile has not put forward any argument as to why there should be a departure from the normal daily tariff rate.

[8] A general principle for a successful party is that costs should ‘follow the event’ and here Mr Young was predominantly successful and obtained significant remedies. As the successful party Mr Young is entitled to a contribution towards his costs, and as the unsuccessful party, Eco Pile is liable to pay them.

[9] On 11 February 2022 Mr Young’s representative made a *Calderbank* offer to Eco Pile. The email is clearly marked “Without prejudice save as to costs” and was made before substantial costs were incurred in preparation for, and attendance at, the investigation meeting. Mr Young offered to settle this matter for payment of outstanding salary, compensation and a contribution to costs for a similar amount to what was awarded.

[10] Factors to consider next are matters which would lead to an increase or decrease from the tariff. The settlement offer was marked “Without prejudice save as to costs”.

¹ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs.

² Awarding remedies and costs | Employment Relations Authority (era.govt.nz).

That offer contained an analysis of Mr Young's case and I accept the offer constituted an effective *Calderbank* offer. Had Eco Pile accepted that offer, it would have been in a better position now and Mr Young's costs would not have been incurred.

[11] The offer was made well before substantial costs would have been incurred in preparation and allowed sufficient time for consideration and acceptance of the offer. I am not persuaded the facts of this matter are so unusual or novel that it was reasonable to reject the offer. In these circumstances, I am persuaded that the respondents' rejection of a very reasonable offer warrants a substantial uplift from what would otherwise have been awarded in costs.

[12] Accordingly, I find that Eco Pile is to pay to Mr Young the sum of \$4,500 towards costs, with a \$2,000 uplift to reflect the *Calderbank* offer, together with the filing fee of \$71.56 within 14 days of this determination.

Orders

[13] Eco Pile is ordered to pay Karl Young within 14 days of the date of this determination:

- (i) \$6,500 in costs;
- (ii) \$71.56 being the Authority filing fee.

Andrew Gane
Member of the Employment Relations Authority