

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 37
5538444

BETWEEN	NEW ZEALAND MEAT WORKERS' & RELATED TRADES UNION INCORPORATED Applicant
A N D	SOUTH PACIFIC MEATS LIMITED First Respondent
A N D	MICHAEL ANTHONY TALLEY Second Respondent

Member of Authority: James Crichton

Representatives: Peter Churchman QC, Counsel for Applicant
Christine Pidduck, Counsel for Respondents

Submissions Received: 29 February 2016 and 17 March 2016 from Applicant
14 March 2016 from Respondents

Date of Determination: 31 March 2016

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In my substantive determination on this matter, I found for the applicant against the first respondent and reserved costs.

The application for costs

[2] The applicant Union seeks costs in the sum of \$10,000 together with disbursements totalling \$600.78.

[3] The matter was dealt with in two hearing days so the starting point for the Authority, using the daily tariff approach, would be \$7,000 but an uplift is sought because of the behaviour of the respondent company.

The response

[4] The respondent parties submit that a costs award of \$7,000 is appropriate, that no uplift ought to be contemplated, and that disbursements ought not to be charged either.

Determination

[5] The law on cost fixing in the Authority is well settled and need not be recited again here. It is enough to record that the Full Bench of the Employment Court has mandated the approach typically adopted by the Authority, including the daily tariff which frequently informs the Authority's cost fixing.

[6] There is no suggestion that the Union was not successful in its claim and because costs follow the event, the Union is entitled to look to the respondents for a contribution to the Union's costs. Consistent with the Authority's common approach, the starting point must be the applicable daily tariff for the number of days of hearing. That much is common ground and takes us to a figure of \$7,000.

[7] The Union seeks an uplift of \$3,000 on the footing that it was put to extra trouble and expense because of a fruitless exercise in dealing with the legal principles that might apply to a category of documents apparently in the possession of the first respondent which were subsequently found not to exist.

[8] It is the case that the applicant Union advanced precisely the same arguments for an uplift in costs in the Employment Court. The respondent says that by advancing those same arguments now in this Authority, the Union is attempting to double dip.

[9] I do not agree. What the Union is doing is drawing my attention to the effect of the respondent's behaviour on the proceeding in the Authority. It is the cost impost that the Union incurred in the Authority that I must be concerned with, not the fact that in related proceedings in the Employment Court, a similar argument was run.

[10] The fact is that the Authority proceeding was delayed by some six months because of a fruitless exercise and I agree with the Union's submission that that delay ought to sound in costs. Moreover, there were telephone attendances in which the question of whether these documents were or were not in existence, had to be canvassed prior to my investigation meeting.

[11] In all the circumstances, I am satisfied that an uplift is appropriate and I allow an uplift of \$2,000.

[12] The Union claims its disbursements as well and these are itemised. The objection from the respondent is that local counsel ought to have been used but that does not strike me as an attractive argument; if the respondent had been successful in this proceeding, it presumably would have sought costs and would have sought to have recovered disbursements for its Waikato-based counsel travelling to the Authority's investigation meeting in Christchurch.

[13] In any event, this matter involved two plants, one based at Awarua, halfway between Bluff and Invercargill, and the other based in rural Canterbury. It is difficult to see, in a practical sense, how local counsel could have been engaged. In any event, Mr Churchman QC has acted for this Union for over 30 years and there is little proper basis on which that longstanding relationship can be challenged.

[14] The disbursements are reasonable, especially for senior counsel, and on that footing I allow them in their entirety.

[15] South Pacific Meats Limited is to pay to the New Zealand Meat Workers' & Related Trades Union Inc the sum of \$9,678 as a contribution to the Union's costs.

James Crichton
Chief of the Employment Relations Authority