

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 169
3000169

BETWEEN	JACQUI TAIT Applicant
AND	REM GLOBAL LIMITED (PREVIOUSLY NAMED FIGUREX LIMITED) First Respondent
AND	GREGORY CHARLES PETERS Second Respondent

Member of Authority: Robin Arthur

Representatives: Danny Gelb, Advocate for the Applicant
Vanessa Bainbridge, Advocate for the Respondent

Determination 12 June 2017

COSTS DETERMINATION OF THE AUTHORITY

[1] By oral determination issued on 27 April 2017 the Authority found Jacqui Tait's employment with REM Global Limited (RGL) ended by constructive dismissal and ordered remedies of lost wages and compensation.¹ RGL was also ordered to pay Ms Tait arrears of wages, holiday pay and Kiwisaver contributions that should have been paid at the end of her employment. A penalty sought against RGL director Gregory Peters could not be imposed as he had been adjudicated bankrupt on 16 February 2017.

[2] Costs were reserved. The parties were encouraged to resolve any of costs between themselves but were not able to do so.

[3] Ms Tait has lodged a memorandum seeking an order requiring RGL to contribute \$8,728.51 to her costs of representation which totalled \$14,294.51. She

¹ *Tait v REM Global Limited & Gregory Peters* [2017] NZERA Auckland 124.

also sought reimbursement of \$71.56 for the Authority fee paid to lodge her grievance application.

[4] The costs contribution sought was calculated on an indemnity basis from the date that RGL advised it would not attend a mediation scheduled for 7 February. The mediation was arranged under a notice of direction made by the Authority under s 159 of the Employment Relations Act 2000 (the Act). RGL advised it would not attend by email sent after 6pm on Friday, 3 February, that is the working day immediately prior to 7 February. This delay occurred against an earlier background of delay by RGL in responding to Ms Tait's grievance and providing wage records. The parties did eventually attend mediation on 22 February. Ms Tait's advocate's calculation of the costs award sought included a 'credit' for time spent in that later mediation as it would have been incurred if RGL had not cancelled the earlier mediation.

[5] RGL accepted Ms Tait was entitled to "some costs" as the successful party but submitted this should be no more than the usual tariff. The investigation meeting took half a day, including delivery of an oral determination, so RGL said an award on a tariff basis should be no more than \$2250.

[6] RGL also referred to the Authority Practice Note on Costs, dated 30 June 2016, stating at paragraph [12]:

Costs associated with preparation for and attendance at mediation, whether by agreement of the parties or at the direction of the Authority, are not typically included in costs awards of the Authority (unless some particular or unusual circumstance of the case makes it appropriate to do so).

[7] RGL submitted there was "no particular or unusual circumstance" in its conduct relating to mediation making it appropriate to vary the daily tariff. It also said it would "shortly go into liquidation" and not be in a position to pay costs.

[8] Contrary to RGL's submission, its conduct in responding to the direction to mediation was unusual and inappropriate. Attendance at mediation, and participation in good faith, in this case was not a voluntary act. It was by direction. Section 159(2) of the Act requires the parties comply with such a direction. No satisfactory explanation was given for the belated cancellation. The date had been confirmed by RGL's representative a fortnight earlier.

[9] Along with delays in provided Ms Tait's wage records, RGL's delay and failure in participating in directed mediation was a sufficiently significant shortcoming in good faith participation to warrant an uplift in the tariff. It was conduct that unnecessarily increased Ms Tait's costs, not in preparation and participation in the mediation as such but for the necessary extra time incurred in securing a further direction on mediation. This included an additional case management conference with the Authority member. An uplift of \$2000 on the tariff is appropriate.

[10] As a result RGL must pay Ms Tait \$4250 as a contribution to her costs of representation in successfully pursuing her personal grievance. It must also reimburse her for the filing fee of \$71.56.

[11] RGL has made repeated references to imminent liquidation during the course of this proceeding. The Authority investigation meeting on 27 April and an email from RGL's representative to Ms Tait's advocate on 8 May are examples of two such occasions.

[12] At the date and time this costs determination was issued I checked the Companies Office register online. RGL remained on the register and was not shown as being in liquidation.

Robin Arthur
Member of the Employment Relations Authority