

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2019] NZERA 382  
3036251

BETWEEN	HAYDEN MUNRO Applicant
AND	AV WORLD (2016) LIMITED First Respondent
AND	PAUL HALLIWELL Second Respondent

Member of Authority:	Robin Arthur
Representatives:	Claire Mansell, counsel for the Applicant Paul Wicks QC, counsel for the Respondent
Submissions:	14 June and 26 June 2019 from the Applicant and 25 June from the Respondents
Determination:	28 June 2019

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A. Within 28 days of the date of this determination AV World (2016) Limited (AVW) must pay Hayden Munro the sum of \$7,000 as a contribution to his costs of representation and \$378.22 in reimbursement of expenses incurred in pursuing his application.**

[1] By determination issued on 31 May 2019 the Authority found AV World 2016 Limited (AVW) had unjustifiably disadvantaged Hayden Munro before his employment ended in July 2018. The Authority declined a counterclaim by AVW for damages in relation to allegations it made about him. Mr Munro was awarded compensation of \$14,000 for humiliation, loss of dignity and injury to his feelings as a remedy for his grievance. He was not successful in other claims that his employment ended by constructive dismissal and that a penalty should be imposed on AVW's

director Paul Halliwell for aiding and abetting breaches of Mr Munro's terms of employment.<sup>1</sup>

[2] The parties were encouraged to resolve any costs issue themselves but were unable to do so. They lodged submissions for consideration in a costs determination. Those submissions addressed established principles for assessing costs under the Authority's usual daily tariff, with the starting figure adjusted upwards or downwards for factors relevant in the particular circumstances.<sup>2</sup>

*Costs follow the event*

[3] Mr Munro was successful in establishing a personal grievance of unjustified action, defeating a counterclaim and being awarded compensation. Costs follow that event.

[4] A two day investigation meeting was needed to consider Mr Munro's application and AVW's counterclaim. The starting point for the assessment of costs therefore totalled \$8,000, being \$4,500 for the first day and \$3,500 for the second day.

*The effect of mixed success and unnecessary costs*

[5] Some downward adjustment of the starting point was appropriate given Mr Munro failed in his constructive dismissal claim.<sup>3</sup> AVW submitted the reduction should be to \$4,000 because Mr Munro succeeded in only one of five separate allegations of sexual harassment he raised. However the emphasis on that aspect of his claim overlooked that his grievance was established not solely on the ground of one instance of offensive behaviour by Mr Halliwell (that met the relevant harassment definition) but also on two other grounds of how Mr Munro was treated by AVW. Those grounds concerned unjustified actions when he sought employment advice and misleading behaviour by Mr Halliwell about the future of Mr Munro's employment. Balancing those aspects, a reduction of the tariff figure to \$6,000 was warranted.

[6] No adjustment, on a broad assessment, was necessary to account for the Authority not imposing the penalty Mr Munro had sought against Mr Halliwell. A penalty was not awarded against Mr Halliwell to avoid an element of double counting

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<sup>1</sup> *Munro v AV World (2016) Limited & Paul Halliwell* [2019] NZERA 321.

<sup>2</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].

<sup>3</sup> *Coomer v J A McCallum and Son Limited* [2017] NZEmpC 156 at [43] and *Best Health Products Ltd v Nee* [2016] NZEmpC 16 at [20] and [21].

with the remedies AVW was ordered to pay arising out of his actions. A further discount in respect of costs would give AVW an unwarranted obverse benefit.

[7] An upward adjustment from provisional tariff amount of \$6,000 was, however, appropriate to take account of the unnecessary costs Mr Munro incurred in defending AVW's unmeritorious counterclaim.<sup>4</sup> The Authority's substantive determination described those allegations as appearing to really only be made to dissuade Mr Munro from pursuing his grievance. Consideration of the evidence about those allegations increased the preparation necessary for the investigation meeting and lengthened the time it took. An upward adjustment of the tariff figure to \$7,000 was warranted to take some account of those unnecessarily increased costs.

*Other factors*

[8] No without prejudice offers were made to settle this matter so did not need to be taken into account in assessing costs.

*Outcome on costs*

[9] In exercise of the discretion to assess and award costs, \$7,000 was a modest and reasonable sum to require AVW to contribute to Mr Munro's costs of representation.

*Expenses*

[10] Mr Munro incurred expenses of \$71.56 as the fee to lodge his application in the Authority and \$306.66 in hearing fees charged under r 27 of the Employment Relations Authority Regulations 2000. AVW must reimburse him \$378.22 as expenses.

Robin Arthur  
Member of the Employment Relations Authority

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<sup>4</sup> See *Nee*, above n 3, at [29] and [30].