

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 29  
3024992

BETWEEN                      TIMOTHY JELLIE  
Applicant

AND                              HOSPITALITY SERVICES  
LIMITED t/a KINGSGATE  
HOTEL GREYMOUTH  
Respondent

Member of Authority:        James Crichton

Representatives:             Applicant in person  
Takeshi Ito, counsel for the Respondent

Investigation Meeting:       31 October 2018

Submissions Received:      23 November 2018 and 3 December 2018 from the  
Applicant  
3 December 2018 from the Respondent

Date of Determination:      23 January 2019

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**COST DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1]     I found no evidence of any justiciable claim against Kingsgate Hotel by Mr Jellie.

[2]     Kingsgate sought an award of costs at the daily tariff rate of \$4,500. Mr Jellie made no comment at all in respect to costs during the hearing of his matter and accordingly I reserved leave for him to make those submissions and give Kingsgate an opportunity of responding, if they chose to.

[3]     I also expressed the view, without deciding the matter, that this might be a case where costs should lie where they fall.

**The claim for costs**

[4] In their submissions made at the end of the investigation meeting and subsequently, Kingsgate Hotel have sought an award of costs in the range of the Authority's current daily tariff. In the submissions received after the investigation meeting, Kingsgate referred to the range being from \$3,500 to \$5,000.

[5] Reference was also made in those submissions to the fact that Kingsgate was put to the trouble and cost of defending a claim which they say had no merit whatever.

**The response**

[6] Mr Jellie, in response, made the observation that if his case had no merit, it was difficult to see why I had reserved my decision.

[7] Moreover, Mr Jellie maintained that he had sought legal advice – this to respond to an allegation from Kingsgate that had Mr Jellie got proper advice, he would never have proceeded.

**Discussion**

[8] It is true that Mr Jellie's claim proceeded in a rather muddled way. His statement of claim alleged only bullying and harassment. When his very brief statement of evidence was filed, it alleged unjustified dismissal as well.

[9] While it is true that I reserved my decision, that was not so much because of the challenges of Mr Jellie's claim as my need to assess the significant weight of evidence from Kingsgate about their management of Mr Jellie during the employment.

[10] While I understand Kingsgate's position throughout the proceeding that they should not have been forced to defend allegations they thought had no merit, the whole point of this jurisdiction is to give parties the opportunity to be heard and particularly, for individuals to appear on their own behalf.

[11] Where, as in this case, the claim presented by that individual has come up short, the only way the matter can be rebalanced is by an award of costs and understandably, Kingsgate seeks such an award at a figure around the daily tariff, which presently stands at \$4,500.

[12] I did opine in the determination on the substantive matter, that I thought this might be a case where costs should lie where they fell. There is an obvious imbalance in power between a well-resourced employer party with talented human resources and employment law staff on the one hand and an individual former employee, acting for himself. In addition to the distinct difference in the resources that each party has to engage in the Authority's process, there is another significant factor which was startlingly evident in the current case: this was the knowledge gap between the parties.

[13] Despite his obvious intelligence, Mr Jellie continued to demonstrate throughout the Authority's investigation that he had a very limited grasp of the relevant legal principles and the way to run a case in the Authority to best effect. It is axiomatic that that fact was reflected in the outcome.

[14] That said, Kingsgate is right that costs normally follow the event (that is the successful party can look to the unsuccessful party for a contribution to the successful party's costs) and while costs are discretionary, in this Authority the standard practice is to apply a daily tariff. The present daily tariff in the Authority is \$4,500 for the first hearing day. What the presiding Member does is commence the analysis of what costs award to make by using the daily tariff as a starting point.

[15] A proper factor for the Authority to consider is the ability or otherwise of the unsuccessful party to contribute to the costs of the successful party. In the particular circumstances of this case, the submissions for Mr Jellie suggest that after the payment from his wages of a reduction in his student loan, he has a disposable income of around \$300 a week .

[16] On that basis, any award I made of the magnitude of the daily tariff for example would be more than Mr Jellie would be able to cope with and would not in my view create a wholesome environment in which both parties in a small community can move on after the fundamental breach in their relationship.

[17] In all the circumstances, I am persuaded that Mr Jellie must make a contribution to Kingsgate's costs but given his financial circumstances, that contribution can only be modest. I think an award of \$1,000 is sufficient to make the point that litigation, even in this Authority, is always occasioned by risk and bringing a case to the Authority and being unsuccessful potentially attracts a costs award.

[18] As I imagine that Mr Jellie will need time to pay off that sum, leave is reserved for the parties to revert to me if they are unable to agree those arrangements. I should have thought Mr Jellie could engage with counsel for Kingsgate, Takeshi Ito, by email and make the necessary arrangements.

**James Crichton**  
**Chief of the Employment Relations Authority**