

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2020] NZERA 354  
3082792

BETWEEN

JOHN BUTLER  
Applicant

AND

OHOPE CHARTERED CLUB  
INCORPORATED  
Respondent

Member of Authority: Vicki Campbell

Representatives: Stan Austin, advocate for Applicant  
Stephen Franklin, counsel for Respondent

Investigation Meeting: On the papers

Submissions received: 21 August 2020 from Applicant  
21 August 2020 from Respondent

Determination: 1 September 2020

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A. Ohope Chartered Club Incorporated is ordered to pay to Mr Butler the sum of \$3,000 as a contribution toward costs within 28 days of the date of this determination.**

[1] In a determination dated 14 August 2020 I found Mr Butler had been unjustifiably dismissed by reason of redundancy from his employment with Ohope Chartered Club Incorporated (the Club).<sup>1</sup>

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<sup>1</sup> *Butler v Ohope Chartered Club Inc.* [2020] NZERA 322.

[2] Costs were reserved, with the parties encouraged to resolve that issue themselves. In the event that they could not, I set a timetable for submissions.

[3] Mr Butler, as the successful party now seeks a costs order in his favour including an uplift to the Authority's daily tariff in the sum of \$5,171.46. The Club accepts some costs are payable and seeks costs to be capped at half of the daily tariff due to the Club's limited financial resources.

### **Power to award costs**

[4] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.<sup>2</sup> The principles applying to costs are well settled and do not require repeating.<sup>3</sup>

[5] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.<sup>4</sup> The investigation meeting took about just over half a day. I have set the starting point at \$3,000.

### **Conclusion**

[6] Mr Butler submits the daily tariff should be increased due to the time and expense incurred in responding to a claim by the Club in its statement in reply that he was a casual employee. This issue was raised at the outset of the investigation meeting where the Club conceded Mr Butler's employment was not casual. Given that the Club raised this in its statement in reply, it was reasonable to expect Mr Butler to address this in his witness statement. However, I am not satisfied this increased his costs to the extent that an uplift is necessary.

[7] The Club submitted that costs be paid to Mr Butler by way of instalments. Clause 15 of the Second Schedule of the Employment Relations Act 2000 provides the discretion on the Authority to order a party to pay costs but does not provide the power to determine the manner of payment. This is in contrast to ss 123(2) and 135(4A) of

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>3</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>4</sup> Practice Note 2, Costs in the Employment Relations Authority.

the Act which allows the Authority to order payments be made by instalment where the financial position of the employer (or person in the case of a penalty) requires it.

[8] This does not prevent Mr Butler and the Club agreeing between themselves that the costs liability may be paid by way of instalments.

[9] The Ohope Chartered Club Incorporated is ordered to pay to Mr Butler the sum of \$3,000 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority