

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2021] NZERA 111
3082432 and 3082433

BETWEEN CHRISTINA HAIG
 Applicant in 3082432

AND DESMOND HARRISON
 Applicant in 3082433

AND OLLY'S LOG LINK LIMITED
 Respondent

Member of Authority: Michael Loftus

Representatives: David Ure, counsel for the Applicants
 Adam Mapu, advocate for the Respondent

Submissions Received: 2 March and 18 March 2021 from the Applicants
 17 March 2021 from the Respondent

Date of Determination: 22 March 2021

COSTS DETERMINATION OF THE AUTHORITY

[1] On 1 February 2021 I issued a determination in which I concluded that having been unjustifiably dismissed both Ms Haig and Mr Harrison had a personal grievance.¹

[2] Costs were reserved and, as the successful parties, both now seek a contribution toward those they incurred pursuing their claims.

¹ [2021] NZERA 36

[3] Normally the Authority will use a daily tariff approach when addressing a costs claim, with the current starting point being \$4,500 for the first day and \$3,500 for each day thereafter.² From there adjustment may occur depending on the circumstances.

[4] The investigation, which addressed both claims simultaneously, took just over a day (nine hours, spread over two days) though the parties were present longer as they spent time trying, unsuccessfully, to resolve the matter on their own terms.

[5] While both applicants refer to the tariff, each seeks an award in his or her favour and each bases their claim on an assumption the investigation took two full days. Their claims total \$16,000. In support, and aside from reference to the tariff, there is comment Olly's failed to respond to attempts to settle prior to the investigation though no detail is provided.

[6] Olly's response notes the claims were heard simultaneously and refers to the fact the parties were engaged in settlement talks for a significant part of the first day. With respect to earlier attempts at settlement it is submitted the applicants' position far exceeded the amount eventually attained via the Authority's determination. It is submitted that as a result Olly's was forced to use funds it might have put toward settling into covering its own costs and this should be offset against what is characterised as an excessive costs claim. These submissions are supported with correspondence between the parties and copies of Olly's invoices.

[7] By way of reply the applicants reiterate their view the investigation took two days and their claims were *separate and distinct*, with each having their own costs to pay. Regarding settlement attempts, and aside from denying the position they took was excessive, each notes they at least put an offer and that there was no response.

[8] Essentially these submissions leave me with two issues – the extent to which I should be cognisant of the settlement attempts and, then, how that affects application of the tariff.

[9] With respect to the extent to which I should be cognisant of the settlement attempts when considering possible *adjustment* I conclude the answer is nil. The information before me is sparse and there is no suggestion either party proffered a calderbank offer. There is nothing

² *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 and *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135

is the parties' submission on this issue that would convince me to depart from application of the tariff.

[10] That then turns me to the tariff to which both parties refer. This is an approach adopted to provide certainty and approved by the Court and given my dismissal of argument about attempts to settle, the parties submissions give no reason as to why I should depart from applying it.

[11] The first question is thereof whether or not the applicants' claims should be considered joint or separate with respect to time taken. The answer must be joint given there was considerable discussion about this prior to hearing and the outcome was the claims would be heard concurrently.

[12] The second issue is the time taken. It is well established time taken in mediation is not recoverable and I fail to find myself capable of concluding time taken trying to negotiate settlement during an investigation meeting is any different. I recorded a total of nine hours dedicated to the investigation.

[13] These conclusions return me to my opening observation (par [4] above) that I am looking at just over a day which would see a contribution in the order of \$5,500 in total.

[14] As it appears each of the applicants wants their effort recognised separately, I consider it appropriate this simply be split.

Conclusion and Orders

[15] For the reasons described above I order that the respondent, Olly's Log Link Limited, pay the sum of \$5,500.00 (five thousand, five hundred dollars) as a contribution toward the costs the applicants incurred with Christina Haig and Desmond Harrison to each receive half, \$2,750 (two thousand, seven hundred and fifty dollars each).

[16] Payment is to made no later than 4.00pm Monday 12 April 2021.

Michael Loftus
Member of the Employment Relations Authority