

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 366
3099612

BETWEEN SHAUN RAMSAY-CARDNO
Applicant

AND THE PALLET COMPANY
(HAWKES BAY) LIMITED
Respondent

Member of Authority: Claire English

Representatives: Seungmin Kang, counsel for the Applicant
Nicholas Barton for the Respondent

Submissions received: 13 July 2022 from Applicant
No response from Respondent

Determination: 5 August 2022

COSTS DETERMINATION OF THE AUTHORITY

Background

[1] In the Authority's determination dated 29 June 2022, the applicant, Mr Ramsay-Cardno, was found to be unjustifiably dismissed and was awarded \$15,000 without deduction as compensation for hurt and humiliation, and a further \$25.15 in interest¹.

[2] Mr Ramsay-Cardno was the successful party. He is therefore entitled to costs. The Authority's determination of 29 June 2022 noted (at paragraph [90]) that the parties could expect costs would be determined in accordance with the usual daily rate, unless there were circumstances that allowed for an adjustment of that tariff.

¹ See paragraph [88] of the 29 June 2022 determination.

[3] The parties have been unable to resolve the matter of costs between themselves. The applicant has lodged a memorandum as to costs dated 13 July 2022. The applicant seeks a contribution towards costs of \$4,780.

[4] The applicant submits that the investigation meeting took half a day, and a further quarter of a day should be allowed for the filing of written submissions at a later date. This gives a starting point for an award of costs of three-quarters of a day, and at the daily tariff of \$4,500, this amounts to \$3,375.

[5] The applicant seeks an uplift of \$1,405 on the grounds that the respondent unreasonably rejected the applicant's settlement offer, which was some \$3,725 less than the Authority awarded the applicant.

[6] The respondent has not filed any submissions in response, although time has been allowed for this to occur.

[7] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[8] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*² as confirmed in *Fagotti v Acme and Co Limited*³. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful parties conduct.

² [2005] 1 ERNZ 808.

³ [2015] NZEmpC 135 at 114.

[9] The applicant was the successful party. There is no reason why he should not be awarded costs at the usual daily tariff rate.

[10] The second question is whether the applicant might also be entitled to an uplift of those costs. The applicant submits that there are grounds for an uplift, in that the respondent unreasonably refused settlement offers. The documents show that the respondent would indeed have been better off if it had accepted the applicant's offer/s, which, given the time at which the applicant's last offer was made, would also have removed the need for the filing of written submissions.

[11] The Authority has adopted a daily tariff approach as the starting point for considering costs. The current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days⁴. The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[12] The Authority's records indicate that the investigation meeting lasted for half a day. The allowance of one quarter day for the filing of written submissions is fair, noting that if the respondent had accepted the applicant's settlement offer, these submissions would never have been filed. Accordingly, the starting point is the daily tariff for three quarters of a day, amounting to \$3,375.

[13] The uplift sought of \$1,405 is reasonable taking into account the respondent's refusal of the applicant's timely offer to settle.

Orders

[14] Accordingly I order The Pallet Company (Hawkes Bay) Limited to pay to Mr Shaun Ramsay-Cardno the sum of \$4,780 towards costs, together with the filing fee of \$71.56.

Claire English
Member of the Employment Relations Authority

⁴ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1