

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 371
3118372
3119193
3119332

BETWEEN JACQUELINE UNSWORTH
 Applicant 3118372

 DAVID LIBEAU
 Applicant 3119193

 WHITNEY TOWERS
 Applicant 3119332

AND HELLOWORLD TRAVEL
 SERVICES (NZ) LIMITED
 Respondent

Member of Authority: Marija Urlich

Representatives: Dean Organ, advocate for Applicants
 Alastair Espie and Lilli Wilkinson, counsel for
 Respondent

Investigation Meeting: On the papers

Submissions and 26 July 2022 from the Applicants
information received: 2 August 2022 from the Respondent

Determination: 8 August 2022

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination on 12 July 2022 which ordered Helloworld Travel Services (NZ) Limited to pay Ms Unsworth, Mr Libeau and Ms Towers (the applicants) wage and holiday pay arrears and calculate and pay interest on those arrears.¹ In the same determination the Authority found the applicants had

¹ *Jacqueline Unsworth, David Libeau and Whitney Towers v Helloworld Travel Services (NZ) Limited* [2022] NZERA 313.

established personal grievances for unjustifiable disadvantage and unjustified dismissal and awarded reimbursement of lost wages to Ms Unsworth and compensatory damages to the applicants. Costs were reserved and a timetable set if the parties were unable to resolve this issue themselves. The parties filed submissions within the set timetable.

Ms Unsworth, Mr Libeau and Ms Towers' claim for costs

[2] The applicants seek a costs award each of \$5,500 having each incurred actual costs of no less than \$6,480 (plus GST). They make no claim for disbursements. They submit such an award is warranted given:

- they were successful in their claims;
- total hearing time was approximately three and a half days; and
- Helloworld's conduct in not complying with Authority directions to produce relevant documents unnecessarily extended the hearing time.

Helloworld's response

[3] Helloworld opposes the contribution to costs sought by the applicants:

- the application is not supported by invoices, as required by the relevant Authority practice note;
- a global award of no more than \$8,000 is warranted;
- total investigation meeting time of three-days given the in person hearing took just over two and a half days plus two-hours for presentation of closing submissions;
- the starting point for any costs assessment is therefore \$11,500;
- a reduction of one third of the total hearing time is warranted due to withdrawal of the fourth applicant's claim (a starting point of \$8,000); and
- there is no basis for an uplift because the applicants' claims were substantially aligned resulting in efficiencies and any time spent during the hearing dealing with production of relevant information is largely offset by time taken dealing with production of information by a witness summonsed by the applicants.

Costs principles

[4] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.

Costs analysis

[5] The applicants were the successful party. It is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party's costs. It is accepted the applicants have incurred actual costs in respect of this matter. They should receive a contribution to costs incurred.

[6] In assessing an appropriate award of costs the notional daily tariff is a starting point. The applicable daily tariff is \$4,500 for the first day and \$3,500 for every day thereafter. This matter required three hearing days. The total notional costs, applying the Authority tariff, is \$11,500.

[7] The next step in the assessment is to consider whether there are factors which warrant an increase or decrease in the tariff. Both factors are present in this matter – that the fourth applicant settled his claim on a no costs basis following the in-person hearing but before the remote presentation of closing submissions and Helloworld's

clear failure to comply with the Authority direction regarding production of relevant documents. My assessment is these factors should be given equal weight.

[8] Having assessed all the relevant factors a reasonable contribution to the applicants' costs is a total of \$11,500 to be divided between each applicant in equal share.

Outcome

[9] Helloworld Travel Services (NZ) Limited is ordered to pay a total contribution to costs of \$11,500 to be divided in equal share between Jacqueline Unsworth, David Libeau and Whitney Towers and paid to them within 21 days of the date of this determination.

Marija Urlich
Member of the Employment Relations Authority