

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 420
3145044

BETWEEN

LEWIS SHANKAR
Applicant

AND

AQUAFLOW SPA & SWIMMING
POOLS LTD
Respondent

Member of Authority: Peter van Keulen

Representatives: Andrew McInnes, advocate for the Applicant
Michael McAleer, advocate for the Respondent

Investigation Meeting: 5 July 2022

Submissions Received: 12 and 19 July 2022 from the Applicant
12 and 19 July 2022 from the Respondent

Date of Determination: 26 August 2022

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Lewis Shankar started work with Aquaflow Spa & Swimming Pools Ltd on 12 March 2020. After two months, Mr Shankar took time off to attend a tangi in Christchurch and never returned to work.

[2] Mr Shankar says he was dismissed by Aquaflow whilst he was away from work as it hired a replacement employee.

[3] Aquaflow says Mr Shankar repudiated his employment agreement by refusing to perform his obligations – he was absent for over three weeks and most of that was without

explanation or any contact from him – and in response it cancelled the employment agreement.

[4] Aquaflow also says:

- (a) In any event, Mr Shankar was unable to do his job meaning the contractual arrangement between them was frustrated and/or cancelled.
- (b) Mr Shankar misrepresented his skills and attributes in his CV and, based on the misrepresentations, Mr Shankar's employment agreement could be cancelled.

The Authority's investigation

[5] Mr Shankar raised a personal grievance for unjustified dismissal. The parties were unable to resolve the grievance and Mr Shankar issued a claim in the Authority for unjustified dismissal.

[6] I investigated Mr Shankar's claim for unjustified dismissal by receiving written evidence and documents, holding an investigation meeting on 5 July 2022 and assessing the written submissions of the parties' representatives.

[7] I received witness statements from Mr Shankar, and David Puklowski and David Whitehurst of Aquaflow. In my investigation meeting, under affirmation, these witnesses confirmed their statements and gave oral evidence in answer to questions from myself and the parties' representatives. Russel Blowers from Aquaflow also gave oral evidence under affirmation.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act) I have not recorded all the evidence and submissions received, in this determination; I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

What happened

[9] Aquaflow employed Mr Shankar as a trainee pool builder; he commenced work on 12 March 2020, in Nelson.

[10] There was no written employment agreement between Mr Shankar and Aquaflow but he was employed to work a minimum of 40 hours per week, Monday to Friday commencing work at 7:30 am.

[11] The start of Mr Shankar's employment was interrupted by Covid-19 national alert level lockdowns. The result was Mr Shankar worked two weeks, was then unable to attend work for lockdown reasons and then resumed attending work at the change of alert levels by the end of April 2020.

[12] In the short period of time Mr Shankar did attend work Aquaflow says it had concerns about his work ethic and his ability. It says it raised its concerns with him on the job but had not escalated this to any formal process.

[13] On 6 May 2020 Mr Shankar left work to attend a tangi in Christchurch. He advised Aquaflow, by text, of this and that he would not return to work for the rest of that week. Aquaflow responded by text with "Ok mate. Sorry to hear of your loss."

[14] Mr Shankar did not return to work with Aquaflow in the following week; the week of 11 May 2020. Mr Shankar did not contact Aquaflow to explain his absence or advise when he would be returning. Aquaflow did not attempt to contact Mr Shankar during this week.

[15] The next week, on 18, 19 and 20 May 2020 Mr Shankar attempted to call David Puklowski of Aquaflow but his calls were not answered nor were the missed calls returned.

[16] Mr Puklowski says he did not receive these calls or if he did, he missed them and he did not see any notification of missed calls and there were no messages left by Mr Shankar. So, from Aquaflow's perspective it believed Mr Shankar had not contacted it at all in the week he was to return to work, 11 May 2020, or the following week, 18 May 2020.

[17] On 28 May 2020 Mr Shankar sent a text to Aquaflow apologising for not keeping in contact with it and advising it that he would like to return to work on the following Monday, 1 June 2020.

[18] Aquaflow responded to Mr Shankar by text on 29 May 2020 telling him that it had been over three weeks with no contact from him, it denied that it had received any calls from

him stating in any event he could have contacted them through other means, and then it said because there had been no contact it had assumed he was not returning to work and it had begun “sorting” a replacement employee.

[19] Mr Shankar did not return to work for Aquaflow. Mr Shankar had been paid up to 5 May 2020 for the work he had done and was not paid when he was away as he had no sick or bereavement leave entitlements. Mr Shankar was then paid his final pay for his holiday pay entitlement after the end of his employment on 14 September 2020.

Analysis

[20] The first step for any unjustified dismissal claim is to establish that the employee has been dismissed. A dismissal requires an action by the employer amounting to a sending away.¹

[21] Mr Shankar’s claim is that the sending away was being told, on 29 May 2020, that Aquaflow had assumed he was not coming back to work and was replacing him i.e., there was no job for him to return to.

[22] When responding to Mr Shankar’s personal grievance for unjustified dismissal Aquaflow stated that Mr Shankar had abandoned his employment and that the contract of employment had been frustrated by Mr Shankar’s failure to perform his obligations. This was repeated in further correspondence and in that correspondence Aquaflow’s representative concluded “(t)here has been no dismissal.”

[23] However, in its Statement in Reply Aquaflow stated that Mr Shankar repudiated his employment agreement by refusing to perform his contractual duties and Aquaflow cancelled the contract. It did not express a conclusion on whether this was a dismissal or not.

[24] Then, in its submissions Aquaflow advanced two reasons for the employment relationship with Mr Shankar coming to an end:

- (a) The contract of employment had become frustrated because the performance of the contract became impossible due to Mr Shankar’s medical and physical

¹ *Wellington Clerical Union v Greenwich* [1983] ACJ 965 (AC).

incapacity; the contract came to an end pursuant to s 60 of the Contract and Commercial Law Act 2017 (the CCL Act).

(b) The contract of employment was repudiated by Mr Shankar's conduct in making it clear he did not want to perform his obligations; Aquaflow cancelled the contract pursuant to s 36 of the CCL Act.

[25] Again, Aquaflow did not express a conclusion on whether this was a dismissal or not but then in its submissions in reply Aquaflow stated that the actions in terminating Mr Shankar's employment were what a fair and reasonable employer could do in all of the circumstances.

[26] So having first denied that it dismissed Mr Shankar as he had abandoned his employment, Aquaflow then advanced two bases for the employment relationship having ended – cancellation in response to repudiation by Mr Shankar and frustration. Then in its final submission Aquaflow concluded that it had dismissed Mr Shankar because it had cancelled the employment agreement in response to Mr Shankar's repudiation.

[27] How the employment relationship between Mr Shankar and Aquaflow came to an end is firstly an evidential matter; I must determine what occurred as a matter of fact based on the evidence.

[28] The relevant events started when Mr Shankar took time off work to attend a tangi in Christchurch from 6 May 2020. Mr Shankar's leave was for the balance of that week and it was without pay. Mr Shankar was expected back at work on 11 May 2020.

[29] Mr Shankar did not return to work on 11 May 2020 nor did he contact Aquaflow to explain his absence.

[30] Mr Shankar did not return to work in the following week but on Monday 18 May 2020 he called Mr Puklowski twice and then once on each of 19 and 20 May 2020. These calls were not answered, Mr Shankar did not leave a message and Mr Puklowski did not notice any missed calls on his phone, so he did not return the calls.

[31] Mr Shankar did not attend work in the next week commencing Monday 25 May 2020. He remained away from work for all of this week but did contact AquafLOW on Thursday 28 May 2020 when he sent a text stating:

Hey Dave hey mate hows (sic) your day going I do apologize for not keeping in contact over the weeks i (sic) did try nd (sic) call ya a few times but unfortunately you might have been busy or something i (sic) just wanting to know mate if we are still algoods (sic) nd (sic) are you happy for me too return nxt (sic) Monday please understand !!! It been really tough time with the death of my family member wont (sic) go into further details but im (sic) fine now was spouse (sic) return last week but wasn't ready but I would also like to know if there anyway I can get some sort of a paye on advance or use some of my annual leave !! for this week please i (sic) know have had some time off over the weeks but im (sic) currently struggling now il (sic) from ya would be great to return back on Monday thanks mate

[32] Mr Shankar sent this text because he had not heard from Mr Pulowski and he wanted to let him know he was coming back to work. Mr Shankar believed he still had a job, evidenced by his advice to Mr Puklowski that he intended to come back to work on Monday 1 June 2020 and by his request for an advance of pay or payment of holiday pay for some of the time he had been absent from work.

[33] From AquafLOW's perspective, when it received Mr Shankar's text it had been two and a half weeks without any contact from him. Mr Puklowski said in evidence that when he received the text he thought, at that time, that Mr Shankar had moved on. I asked Mr Puklowski if he thought Mr Shankar was still employed at that time and he said he not at that stage, it had been too long and they had already made the decision to look for someone else.

[34] Mr Puklowski then responded to Mr Shankar's text, on 29 May 2020, stating:

Hello [Mr Shankar]

...

It has now been over three weeks with no contact from you. You say you called me but that is not true as there would have been missed calls on my phone. Apart form (sic) that there are other ways you could have contacted me.

Then you have asked for money, you are not due for any annual leave. So sorry

If you needed money that bad you should of come back to work or at least contacted me. Because you didn't contact me I assumed that you weren't coming back and I have been sorting another guy.

....

[35] So, it is clear from the evidence that Aquaflow relied on Mr Shankar not returning to work for two and a half weeks, without any contact, to assume he was not continuing his employment.

[36] It is also clear that Aquaflow did not turn its mind to whether this was frustration, repudiation and cancellation or abandonment. And despite the submissions of Aquaflow's advocate I will consider each position to see if one of them is the basis on which Mr Shankar's employment came to an end.

Frustration

[37] Frustration occurs when a contract has become impossible to perform and for this reason the parties are discharged from their obligations to perform.²

[38] Aquaflow asserts that the employment agreement became impossible to perform because of Mr Shankar's mental and physical incapacity. And Aquaflow says this is evident from Mr Shankar's explanation as to why he did not return to work prior to 18 May 2020 and then what happened after 18 May 2020 once he had contacted Aquaflow.

[39] In this regard, Mr Shankar says the tangi lasted longer than he expected meaning he could not return to work on 11 May 2020. He returned to Nelson on 18 May 2020 and therefore was physically able to attend work. This is why he called Mr Puklowski on 18 May 2020. However, Mr Shankar says that the effect of the family member's death and attending the tangi had a greater impact on his mental health than he expected. And then, by 25 May 2020, when Mr Shankar had not received any response from Mr Puklowski he became anxious and stressed; his mental health deteriorated and he ended up being admitted to hospital.

[40] These mental and physical incapacities were not permanent and were in many respects unexceptional events (although severe in this case) that might lead an employee to take

² Section 60 of the Contract and Commercial Law Act 2017.

additional bereavement leave and/or sick leave, with a view to the employee returning to work either when the period of bereavement leave was over or the employee had recovered from the illness or physical impairment.

[41] There is no evidential basis for me to find that Mr Shankar could not perform his employment functions or duties because of some mental or physical incapacity. And it follows that the employment agreement was not frustrated; it was not impossible to perform.

Repudiation and cancellation

[42] Repudiation of a contract occurs when one party makes it clear, by its words or conduct, that it does not intend to perform its obligations under the contract. In these circumstances the other party may cancel the contract.³

[43] Cancellation does not take effect before the cancellation is made known to the other party. Cancellation may be made known by words or actions.⁴

[44] Arguably, Mr Shankar's failure to return to work on 11 May 2020 without explanation or contacting Aquaflow might amount to a repudiation. But even if this was a repudiation Aquaflow's cancellation was problematic.

[45] There are two important points about Aquaflow's decision to cancel the employment agreement - Aquaflow made this decision before it received Mr Shankar's text of 28 May 2020 and it did not advise Mr Shankar of this decision before the text of 28 May.

[46] As cancellation only takes effect when it is made known to the other party there are two possible scenarios here:

(a) Aquaflow ended the employment relationship before 28 May 2020 when it decided to look for a replacement employee – this cannot be cancellation and would amount to a dismissal.

(b) Aquaflow cancelled the employment agreement after 28 May 2020, on 29 May 2020 when it gave notice to Mr Shankar of the cancellation in the text

³ Section 36 of the Contract and Commercial Law Act 2017.

⁴ Section 41 of the Contract and Commercial Law Act 2017.

message. However, at this stage there was no longer a repudiation capable of acceptance as Mr Shankar had made it clear he was ready to return to work and could perform the contract.

[47] I conclude therefore, that Aquaflow did not cancel the contract correctly and then could not cancel the contract.

Abandonment

[48] The first thing to note with abandonment is that Aquaflow and Mr Shankar did not have a written employment agreement so there is no contractual provision that sets out how abandonment is applied.

[49] Putting that to one side, in order for me to conclude that Mr Shankar abandoned his employment I need to be satisfied that Mr Shankar:⁵

- (a) Had been absent for a number of consecutive days.
- (b) Did not have a good reason for this absence or he did not speak to Aquaflow about his absence.
- (c) Aquaflow had taken reasonable steps to make enquiries of Mr Shankar before concluding he had abandoned his employment or in the absence of any steps by Aquaflow, it was right to assume abandonment given the circumstances.

[50] In this case the first two steps are satisfied as Mr Shankar was absent from work for three and a half weeks and he did not contact Aquaflow about his absence.

[51] However, Aquaflow did not try to contact Mr Shankar to find out why he was absent and/or if he was returning to work. And, I am not satisfied that the circumstances – three and half weeks without contact - is sufficient to conclude that Aquaflow was not required to do this and could assume abandonment. This is particularly where there is no employment agreement that sets out that a period of unexplained absence will amount to abandonment.

⁵ *EM Ramsbottom Ltd v Chambers* [2000] 2 ERNZ 97; *Lwin v A Honest International Co Ltd* [2003] 1 ERNZ 387; and *Stephen Cross v Onerahi Hotel Limited* [2016] NZEmpC 26.

Conclusion on dismissal - the employment relationship is the real focus

[52] All three of the arguments advanced by Aquaflow to support its position on the end of the employment relationship Aquaflow rely on contractual law principles. Aquaflow's position being that the contract between the parties was brought to an end because of Mr Shankar's failure to meet his contractual obligations – either through frustration, repudiation or abandonment.

[53] The inherent problem in seeking to rely on contractual principles is that the this addresses only one element of the relationship. The Supreme Court has recently addressed this point in *FMV v TZZ*, reminding employers and employees as well as those that advise and represent employers and employees that:

[46] While the Employment Relations Act did not reverse the [Employment Contract Act 1991]'s structural reforms such as the abolition of the national award system, it did step back from the [Employment Contract Act 1991]'s strictly contractual focus. As its name suggests, the current Act takes a relational approach, insisting that employment is more than a market transaction theoretically conducted at arm's length between individuals with equal bargaining power. The result is that while the employment agreement remains very important, it is the employment relationship that is the real focus under the current Act. The scope of the employment relationship is wider than the employment contract and it adds an additional dimension to contractual rights and obligations. This is reflected in two important ways.

[47] The first is the statutory incorporation of the principle of good faith into the employment relationship. This principle underpins the Act's relational approach.

[48] ...

[49] ...

[50] Section 4 then provides that parties to an employment relationship "must deal with each other in good faith". This means, of course, that parties must not mislead or deceive one another, but its effect is wider than that. Parties must also actively and constructively establish and maintain a productive employment relationship; they must be responsive and communicative; and employers must comply with procedural fairness requirements.

[Footnotes omitted.]

[54] So, the employment relationship is the real focus and this brings with it the duty of good faith (amongst other things); an obligation to be responsive and communicative and to

comply with procedural fairness requirements. This means a party cannot simply rely on contractual provisions and/or the application of contractual law to bring an employment relationship to an end. There must be some communication to understand the other party's position before action is taken or a position asserted. There will be very few, if any, situations where an employer can rely on frustration, repudiation or abandonment without understanding the employee's particular circumstances that either inform the alleged frustration, repudiation or abandonment or respond to the alleged frustration, repudiation or abandonment.

[55] And this is the case here. Aquaflow needed to understand Mr Shankar's personal circumstances before it took a view on frustration, repudiation or abandonment.

[56] The simple point is Aquaflow made decisions about Mr Shankar's employment without at least trying to contact him to understand what had happened to him and whether he was able and willing to return to work. It may have been that if contact had been made prior to 28 May 2020 Mr Shankar would have returned to work or he may have still been dismissed, but that is of no consequence given Aquaflow's actions.

[57] Aquaflow cannot rely on the contractual principles alone to explain and justify the way in which the employment relationship with Mr Shankar came to an end. Aquaflow dismissed Mr Shankar when it made a decision prior to 28 May 2020 that he was not returning to work, which was then communicated to him by text message on 29 May 2020; in the circumstances this is not frustration, repudiation and cancellation, or abandonment.

[58] Aquaflow dismissed Mr Shankar so I will now consider if that was justified.

Was Aquaflow's dismissal of Mr Shankar justified?

[59] There are two aspects to justification; whether the employer carried out a fair process in coming to the decision to dismiss and whether the decision to dismiss was substantively justified.

[60] A fair process is governed by s 4(1A) and s 103A of the Act. Based on these sections, Aquaflow needed to:

- (a) Properly investigate the concerns it had regarding Mr Shankar not returning to work and not contacting it about this;
- (b) Clearly outline its concerns regarding this to Mr Shankar so that he could respond;
- (c) Give Mr Shankar an opportunity to respond to the concerns before it made its decision to dismiss; and
- (d) Consider any response before it decided to dismiss Mr Shankar.

[61] As Aquaflow did not contact Mr Shankar at all over him not returning to work there was no process, let alone one that met the requirements outlined above. It also follows that as there was no process there was no basis to decide that dismissal was appropriate.

[62] Therefore, dismissal was unjustified both procedurally and substantively.

Remedies

[63] As Mr Shankar has been successful with his unjustified dismissal claim I must consider what remedies he is entitled to.

Misrepresentation

[64] As part of the assessment of remedies I will consider Aquaflow's submission that it had been induced to enter into the employment agreement by the misrepresentations on Mr Shankar's CV. And, as a result, the contract can be cancelled pursuant to s 37(1)(b) of the CCL Act.

[65] The point to note here is that Mr Shankar's employment agreement was not cancelled for misrepresentation so the weight of this submission must be that if Aquaflow has unjustifiably dismissed Mr Shankar then the fact that Aquaflow could have cancelled the contract for some other reason means he should not get the benefit of the unjustified dismissal. This is essentially an argument similar to the post dismissal discovery of

misconduct that was established in *Salt v Fell* and developed by the Employment Court in *Xtreme Dining Ltd t/a Think Steel v Dewar* and then *Lawson v New Zealand Transport Agency*.⁶ The argument being that no remedies should be granted for an unjustified dismissal if a justified dismissal could have been effected by the employer for other reasons or because the employee's behaviour, unrelated to the events giving rise to the dismissal, was so bad they are not entitled to any remedies.

[66] I have considered this carefully and am not convinced the alleged misrepresentations can impact on Mr Shankar's dismissal. This is because the misrepresentations are subjective. Aquaflow complains that Mr Shankar was not experienced with tools, a team player and able to follow instructions as stated in his CV. These are factors that might inform a process around competence involving an assessment, review and then training or support for improvement. It is not open to an employer to simply decide an employee does not have the skills set out in a CV and therefore there has been a misrepresentation.

[67] I am also not convinced that had a misrepresentation been established which could have justified cancellation, this would mean no remedies should be awarded for an unjustified dismissal. The test for applying this approach is that the conduct complained of must be egregious enough to justify dismissal or disentitle an employee to any remedies. Misrepresenting skills such as being a team player or able to follow instructions is not, in my view, at that level.

[68] So Aquaflow's complaints about Mr Shankar's misrepresentations have no impact on the dismissal or the remedies Mr Shankar might be entitled to.

Compensation

[69] Compensation is an award for the humiliation, loss of dignity and injury to feelings that an applicant suffers and is made pursuant to s 123(1)(c)(i) of the Act.

[70] In assessing the amount of compensation Mr Shankar may be entitled to I need to consider the effects of the dismissal on him. This involves identifying the humiliation, loss of

⁶ *Salt v Fell* [2008] NZCA 128; *Xtreme Dining Ltd t/a Think Steel v Dewar* [2016] NZEmpC 136; and *Lawson v New Zealand Transport Agency* [2016] NZEmpC 165.

dignity or injury to feelings he suffered from the dismissal. I must then assess the harm caused to him and the loss he suffered as a result. Then I must quantify that harm and loss by establishing where that sits on the spectrum of harm and loss suffered by those that have been unjustifiably dismissed and where that corresponds to the spectrum of quantum awarded as compensation.⁷

[71] Mr Shankar's evidence is that he suffered anxiety and mental stress as a result of losing his job. It is also clear from his evidence that he suffered significant humiliation and injury to feelings from the loss of the family member prior to him leaving work and because his calls to Mr Puklowski were not returned – leaving him distressed and “sick with worry” over his job situation.

[72] In assessing the harm and loss arising out of the injury to feelings described I have not factored in the loss of the family member or the events arising in terms of his attempts to contact Mr Puklowski. These events do not relate to the unjustified actions of Aquaflow which caused the unjustified dismissal – noting here there was no separate personal grievance raised in relation to unjustifiable action causing disadvantage as that relates to any alleged failure to return the phone calls Mr Shankar says he made to Aquaflow.

[73] Based on this I quantify the loss and harm Mr Shankar suffered as \$9,000.00.

Reimbursement

[74] As Mr Shankar has a personal grievance if he has lost remuneration as a result of that grievance then pursuant to sections 123 and 128 of the Act, he is entitled to the lesser of his lost remuneration and three months ordinary time remuneration.

[75] Mr Shankar's actual loss is \$6,373.08 and three months ordinary time remuneration is \$9,828.00. On this basis I award Mr Shankar \$6,373.08.

⁷ *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71; *Waikato District Health Board v Kathleen Ann Archibald* [2017] NZEmpC 132; and *Richora Group Ltd v Cheng* [2018] NZEmpC 113.

Contribution

[76] As I have awarded remedies to Mr Shankar, I must now consider whether he contributed to the situation that gave rise to his grievance.⁸ This assessment requires me to determine if Mr Shankar behaved in a manner that was culpable or blameworthy, and this behaviour contributed to his grievance.⁹

[77] In this case the relevant behaviour of Mr Shankar is his failure to return to work as agreed on 11 May 2020 and subsequently, the failure to contact Aquaflow on or immediately after 11 May 2020 to explain his continued absence, and the failure to follow up the calls to Mr Puklowski with an email or text message in the week of 18 May 2020.

[78] Mr Shankar failed to meet his obligations of good faith – he was not communicative or responsive. Mr Shankar could and should have done more to contact Aquaflow regarding his absence both in the week of 11 May 2020 and 18 May 2020. In fact, as he was in Nelson from 18 May 2020 he could and should have simply attended at work rather than trying to call Mr Puklowski and waiting for a return call.

[79] This behaviour was blameworthy and culpable. And this behaviour directly contributed to Mr Shankar's dismissal. So a reduction to the remedies awarded is appropriate and in this case is at the higher end of the scale, particularly given the time frame involved and the limited attempts Mr Shankar did make to contact Aquaflow. I assess the level of contribution to warrant a reduction in both remedies by 40%.

Summary

[80] Aquaflow unjustifiably dismissed Mr Shankar. In settlement of this grievance Aquaflow must pay Mr Shankar:

- (a) \$5,400.00 for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000 – this sum has been reduced for contribution and is to be paid without further deduction.

⁸ Section 124 of the Act.

⁹ *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136.

(b) \$3,823.85 for lost remuneration to s 123(1)(b) of the Employment Relations Act 2000 – this sum has been reduced for contribution and is to be reduced further by normal payroll deductions (such as PAYE).

Costs

[81] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed, Mr Shankar may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of this determination. From the date of service of that memorandum Aquaflow will then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[82] If the Authority is asked to determine costs, the parties can expect the Authority to apply its usual daily rate unless particular circumstances or factors require an upward or downward adjustment of that tariff.¹⁰

Peter van Keulen
Member of the Employment Relations Authority

¹⁰ For further information about the factors considered in assessing costs, see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.