

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 439
3150822

BETWEEN MARLON BATISTA DOS
 SANTOS
 Applicant

AND SOUTHLAND FOOD SERVICES
 LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: David Buckingham, advocate for the Applicant
 No appearance for the Respondent

Submissions Received: 10 August 2022 from the Applicant

Date of Determination: 6 September 2022

COSTS DETERMINATION OF THE AUTHORITY

A. Southland Food Services Limited is to pay Marlon Batista dos Santos costs of \$2,321.56.

[1] In my determination dated 5 August 2022, I found that Mr dos Santos had an employment relationship problem with his former employer, Southland Food Services Limited. The company was ordered to pay Mr dos Santos arrears of wages, sick leave and

holiday pay. Penalties were ordered against the company and I also found that Mr dos Santos had a personal grievance and ordered compensation as a remedy.

[2] I reserved costs with submissions to be provided in accordance with a timetable. Within time, the Authority received submissions on behalf of Mr dos Santos. The submissions were served on Southland Food Services Limited on 15 August 2022. The company has not lodged any submissions in reply. This determination resolves the claim for costs.

Assessment

[3] I am asked to apply the daily tariff approach but at a full first day rate, despite the investigation meeting taking less than half the first day. That is supported by reference to the company not engaging constructively with the representative and not engaging with the Authority's investigation.

[4] Mr dos Santos succeeded with his claims to a significant extent. He incurred the costs of a representative for these proceedings. Mr dos Santos is entitled to an award of costs.

[5] I agree that lack of engagement by the company and its non-compliance with directions to provide wages and time records and copies of employment agreements meant that some additional time was expended to prepare for the investigation meeting. It is appropriate to recognise that to a modest extent in assessing costs.

[6] Matters may have been capable of resolution without the need to commence or to continue proceedings if the company had taken a different approach to exchanges with the representative. The Authority's determination of the problem would have occupied much less time if the company had complied with directions. However, increasing an award of cost now for these reasons would amount to penalising the company. Assessing costs should not serve that purpose.

[7] I fix costs at half the first day rate of the daily tariff (\$2,250.00). Given the time taken at the investigation meeting, this includes sufficient recognition for any additional time for the representative's preparation. Mr dos Santos is also entitled to recover the lodgement fee of \$71.56.

[8] There is a further claim for \$92.00 to cover printing and binding for the investigation meeting and printing and stationery used during the matter. If this was a disbursement, it was not supported by a 3rd party invoice. There is no basis to depart from the standard daily tariff approach typically used by the Authority.

[9] I am asked to allow immediate enforcement of any costs order. There is no reason to defer the date by which the company must comply with this determination. It can be enforced from the date it is issued.

Philip Cheyne
Member of the Employment Relations Authority