

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2022] NZERA 630  
3141801

BETWEEN

MUSTAFA HUSSAINI  
First Applicant

AND

ASIA PACIFIC GROUP  
LIMITED (in liquidation)  
Respondent

Member of Authority: Antoinette Baker

Representatives: Alex Kersjes, advocate for the Applicant  
Melanie Smith (Tatana) for the Respondent

Submissions received: 8 November 2022 for the Applicant  
None received for the Respondent

Date of Determination: 29 November 2022

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Costs**

[1] The applicant, Mr Hussaini has applied for a contribution to his costs from the respondent (APG) after determination of his application for unjustified dismissal and to recover unauthorised deductions from his pay. Mr Hussaini was successful in relation to the unjustified dismissal claim. In my determination dated 26 October 2022 (my determination) I made the following orders under s 123 of the Employment Relations Act 2000 (the Act):

- a. \$3,376.24 gross for lost earnings under s123(1)(b) of the Act
- b. \$18,000.00 compensation under s123(1)(c)(i) of the Act

[2] As stated in my determination, APG was liquidated after the investigation meeting in this matter and before I issued my determination. Mr Hussaini's representative on behalf of Mr Hussaini sought and was granted the liquidator's permission pursuant to s248(1)(c) of the Companies Act 1993 to continue the proceedings resulting in the completion of my determination. My determination set out a timetable for costs and this was sent to Ms Smith (Tatana) and the liquidator. Only Mr Hussaini's representative filed a submission within that timetable.

[3] Mr Hussaini seeks a \$2,764.56 uplift to the usual Authority one day investigation meeting tariff of \$4,500.00. This is based on a Calderbank letter sent by his representative to APG on 22 April 2022 giving until 29<sup>th</sup> April 2022 to accept. That letter offered to settle all matters for a payment to him of \$10,000.00 plus costs which were estimated at the time to be \$8,000.00 to \$10,000.00 plus GST. Mr Hussaini has provided an invoice supporting that his costs in this matter totalled \$8,250.00 plus \$264.56 for disbursements including the Authority filing fee.

[4] I do not find there should be the uplift as submitted for Mr Hussaini for the following reasons.

[5] The Employment Court<sup>1</sup> has observed that while Calderbank offers are "front and centre" for the Court when considering costs, the Authority's discretion is broader and sits within the context of a jurisdiction "intended to be low level, costs effective, readily accessible and non-technical".

[6] While the Employment Court<sup>2</sup> has also said that "the public interest in the fair and expeditious resolution of disputes would be adversely affected if parties were permitted to ignore a without prejudice letter without costs being impacted", that jurisdiction has a specific regulatory obligation to consider offers made to settle when exercising its discretion to make orders for costs<sup>3</sup>. The Authority's equivalent provision does not contain that specific<sup>4</sup> and has broader discretion for the reasons outlined above.

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<sup>1</sup> *Stevens v Hapag-Lloyd (NZ) Ltd* [2015] ERNZ 224 at [94].

<sup>2</sup> *Lancom Technology Limited v Forman* [2018] NZEmpC 30 at [38].

<sup>3</sup> Employment Court Regulations 2000, Regulation 68.

<sup>4</sup> Employment Relations Act 2000, Schedule 2, clause 15.

[7] I find that Mr Hussaini's costs submission does not satisfy me that there should be an uplift. While there may have been a 'Calderbank' letter there are no reasons before me beyond this as to why an uplift should be considered. I heard only from Mr Hussaini and Ms Smith (Tatana). The investigation meeting started at 9.30 am and finished at 1.15pm with two brief breaks. This resulted in a meeting that lasted just over one-half day. In these circumstances I find that an award of one day at the first day Authority tariff of \$4,500.00 is a reasonable contribution to Mr Hussaini's costs.

[8] APG is in liquidation. The publicly available first liquidator report<sup>5</sup> shows the liquidator estimates "\$0" recovery from assets and expected dividends for both secured creditors (one of which is the Inland Revenue seeking a significant debt) and unsecured creditors of which Mr Hussaini would likely be one with the remedies and any costs he is awarded in this matter.

[9] Accordingly, I find little to satisfy me that an uplift is appropriate. I will award costs at the daily first day Authority tariff because the investigation meeting went into the second half of the day. Mr Hussaini is also awarded the Authority filing fee.

### **Order**

[10] Asia Pacific Group Limited (in liquidation) is ordered to pay Mustafa Hussaini \$4,500.00 plus the filing fee of \$71.56 as a contribution to his costs.

Antoinette Baker  
Member of the Employment Relations Authority

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<sup>5</sup> Liquidator's Initial Report, 19 October 2022, New Zealand Insolvency and Trustee Service <https://app.companiesoffice.govt.nz/companies/app/service/services/documents/1BDE48E433BCA588FA3224EA50387434>