

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 154
3138601

BETWEEN	PUYOUNG KWON Applicant
AND	TRANQUILITY HEALTH AND SPA LIMITED Respondent

Member of Authority: Alastair Dumbleton

Representatives: Seungmin Kang, counsel for the Applicant
Priyanka Sharma, advocate for the Respondent

Costs submissions received: 1 February 2023 from Applicant

Determination: 28 March 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority investigated and determined an employment relationship problem brought to it by Ms Puyoung Kwon, the applicant. She had been employed as a junior in the Maelstrom hair salon of Tranquility Health and Spa Ltd (THS), the respondent.

[2] The Authority gave a written determination on 13 January 2023, finding that Ms Kwon had been unjustifiably dismissed. THS was ordered to pay her compensation of \$15,000 and reimburse lost wages of \$3,872.61 to her.

[3] The Authority also found that THS had failed to provide Ms Kwon with a written employment agreement during her eight months of employment. THS was ordered to pay a penalty of \$3,500 for the breach in that regard of ss 64 and 65 of the

Employment Relations Act 2000 (the ER Act), with \$2,000 to be paid to Ms Kwon and the balance to the Crown.

[4] Furthermore, THS was found to have underpaid Ms Kwon for sick leave, and rest and meal breaks. On that account THS was ordered to pay \$1,091.85 to Ms Kwon.

[5] Interest was ordered to be paid on a total of \$4,964.46 from 29 April 2022 until that amount is paid in full.

[6] The Authority reserved the question of costs for application to be made and replied to in writing. An application was made on behalf of Ms Kwon, to which THS has not replied.

[7] Costs of \$12,168.22 and expenses of \$1,676.86 are sought by Ms Kwon.

[8] She was in receipt of legal aid. Total claims paid up to 16 March 2023 by Legal Aid were \$13,845.08. An award of full costs appears to be sought, although there is no indication that the sort of exceptional circumstances which might justify such an award, are present.

[9] The investigation meeting required two full days, for which period the Authority's tariff, if applied, would yield \$8,000 (\$4,500 first day plus \$3,500 second day). An uplift of \$875 is sought for a further ¼ of a day to allow for the preparation of extensive written submissions.

[10] A second uplift of \$3,293.22 is sought to meet the rejection by THS of Calderbank offers made. The first offer, \$13,000, was made well before the investigation meeting began, and the second offer of \$10,000 compensation and \$7,569.40 costs contribution, was made between the first day of the investigation meeting and its resumption some weeks later.

[11] The law to be applied by the Authority in determining costs was reviewed by the Employment Court in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹.

[12] Costs are not to be awarded as punishment or to express disapproval of a party's conduct. Their purpose is to compensate a party who or which has incurred expense

¹ [2005] ERNZ 808.

in applying to the Authority, to have it investigate and determine claims, or has incurred expense in responding to such claims. The amount of costs will usually be modest, and they will normally be awarded to the party which is successful in the outcome of the Authority's investigation.

[13] The Authority has a discretion to award costs based on a daily tariff, which it fixes from time to time and publicises. Currently the tariff is \$4,500 for the first day and \$3,500 for each subsequent day of an investigation meeting.

[14] This is an appropriate case for the tariff to be applied to the two full days of the investigation meeting, in the total amount of \$8,000. The Authority considers that amount should also cover the preparation of submissions. The ¼ day uplift is declined, therefore.

[15] There should however be an uplift for the two Calderbank offers THS received and declined, having been given a reasonable period to consider both. Had either been accepted, THS would have been better off financially and Ms Kwon would not have unnecessarily been put to further expense. THS unreasonably declined a more cost-effective resolution than the investigation was able to offer.

[16] The uplift will be \$3,000, bringing total costs to \$11,000.

[17] Travel expenses of \$1,676.86 are also sought for counsel's accommodation and two trips from Napier to the investigation venue at Auckland. The Authority accepts the value Mr Kang added through being fluent in Korean and English, but the Authority is surprised that counsel was unaware of any civil legal aid lawyer in Auckland, the nation's largest city, who was available to be briefed and appear for the applicant. As a contribution to expenses, \$900 is ordered to be paid to the applicant by THS, and the \$71.56, the fee she paid to lodge the application.

[18] In summary, pursuant to clause 16 of the Schedule 2 of the ER Act, THS is ordered to pay Puyoung Kwon costs of \$11,000, and expenses of \$971.56.

Alastair Dumbleton

Member of the Employment Relations Authority