

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 392  
3192059

BETWEEN      ALI'TASI LUAMANUVAE-SU'A  
Applicant

AND              THE PORT HILLS FOUNDATION  
CHARITABLE TRUST  
Respondent

Member of Authority:      Antoinette Baker

Representatives:          Paul Brown, for Applicant  
   No appearance for Respondent

Submissions received:      29 June 2023 from Applicant

Determination:              25 July 2023

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**COSTS DETERMINATION**

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**Costs**

[1] The applicant, (Ali'itasi) has applied for a contribution to her costs from the respondent, (PHT) after determination of her successful application for unjustified dismissal. In my determination dated 22 June 2023 (my determination) I made the following orders:

- a. \$2,925.00 gross for unpaid notice
- b. \$8,000.00 compensation under s 123(1)(c) of the Employment Relations Act 2000 (the Act)

- c. \$9,450.00 gross for 12 weeks lost earnings under s 128 of the Act
- d. \$1,016.56 under s23 of the Holidays Act 2003.

[2] The issue of costs was reserved for the parties to resolve themselves. They have not been able to do this.

[3] Submissions for costs were received for Ali'itasi. PHT emailed the Authority after my determination was released but with content that related to a dissatisfaction as to the substantive outcome. It has not lodged and served a submission in reply to the application for costs within the directed timeframe. This expired on 14 July 2023. I will therefore consider Ali'itasi's application.

### **Costs principles**

[4] Clause 15 of Schedule 2 of the Act empowers the Authority to order costs to any party as the Authority thinks reasonable. A party should receive a reasonable contribution to costs incurred in achieving a successful result. Costs are discretionary, modest, and are not a mechanism to punish the other party. Some cases may require costs to lie where they fall. <sup>1</sup>

[5] The Authority uses a notional daily tariff <sup>2</sup> as the starting point for assessing costs. The tariff is based on the length of the investigation meeting held in each matter and takes into account the preparation for the same. This tariff may then be adjusted upwards or downwards according to the circumstances of each case considering things like a liable party's means to pay costs, additional preparation required if a case is complex, and any conduct of a party that has unnecessarily increased costs.<sup>3</sup>

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<sup>1</sup> Employment Relations Act 2000, Schedule 2, clause 15 and *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme and Co Limited* [2015] NZEmpC 135 at 106-108.

<sup>2</sup> The current tariff applied for a one-day Authority investigation meeting is \$4,500.00 for the first day and \$3,500.00 for each additional day.

<sup>3</sup> As above at 1.

### **Ali'itasi's submission**

[6] Ali'itasi submits that the tariff for the one-day investigation meeting should be increased by \$1,140.80 due to delays caused by PHT, in that it had been part of a negotiation process with her lawyer that resulted in an agreement to settle being drafted under s149 of the Act, and then would not sign. This resulted in Ali'itasi having to bring her claim to be heard in the Authority, where PHT did not appear at the Investigation Meeting.

[7] I agree that Ali'itasi should have an order for a contribution to her costs. The investigation meeting lasted approximately 90 minutes. The starting point should be \$1,125.00 being a quarter of the first day's tariff.

[8] The uplift sought is then based on additional counsel time that is described as 'increased costs' for the following:

- a. failure of PHT to attend an arranged first mediation and costs (all-inclusive of GST) associated with this totalling \$172.50;
- b. costs associated with communicating about setting up a second mediation totalling \$57.50;
- c. costs associated with drafting and sending to PHT's then counsel a s149 settlement after negotiation about the same had been agreed but to which PHT made no reply and did not sign, a total of \$603.75;
- d. costs associated with the non-provision of directed evidence including communications about the same with the client and the Authority totalling \$77.05.

[9] Considering the above I find that an uplift of \$800.00 as a contribution to costs is appropriate. While Ms Quartermain for PHT emailed the Authority after the Investigation meeting saying she had forgotten to attend because she had expected to have been reminded in an Authority email, I find this unreasonable given the history of this matter with non-appearance at the first mediation, an apparent renegeing of an agreement reached sometime

after this between counsel, and a further non-appearance by PHT at the Investigation meeting. I make this determination on the uncontested submissions for Ali'itasi, accepting she has likely been put to unnecessary costs to have her employment relationship matter resolved.

**Order**

[10] Port Hills Foundation Charitable Trust is ordered to pay Ali'itasi Luamanuvae-Su'a the single sum of \$1,925.00 plus the filing fee of \$71.55 as a contribution to her costs.

Antoinette Baker  
Member of the Employment Relations Authority