

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2023] NZERA 583  
3153862

BETWEEN	MICHAEL FERRIS Senior First Applicant
AND	MICHAEL FERRIS Junior Second Applicant
AND	THE PROPRIETORS OF NUHITI Q Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Ali Bendall, counsel for the Applicants  
Richard Harrison, counsel for the Respondent

Submissions Received: 6 September 2023 from the Applicants  
25 September 2023 from the Respondent

Date of Determination: 6 October 2023

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**DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 26 July 2023 I upheld a personal grievance claim for unjustified dismissal by Michael Ferris Senior and Michael Ferris Junior against The Proprietors of Nuhiti Q.

[2] The claim that Mr Ferris Jr. was paid under the minimum wage and was owed public holiday entitlements was reserved to allow the parties an opportunity to resolve those issues between them. The parties now seek a determination on those matters as well as costs.

[3] The Applicants seek \$42,630.65 in wage arrears for Mr Ferris Jr. for work completed over and above the 40 hours provided for in his individual employment agreement and an award of costs in the range of \$26,000 to \$32,000 for both Applicants.

[4] The Respondent says there is no justification for any additional wage arrears to be paid to Mr Ferris Jr. and a costs award equivalent to the Authority's notional daily tariff for a two day investigation meeting is appropriate.

### **Wage arrears**

[5] Mr Ferris Jr.'s salary recorded in his employment agreement signed on 31 November 2017 indicated he was paid below the minimum wage because of the wage rate that was selected. However, on review of the material now lodged with the Authority, at that time Mr Ferris Jr. rate of pay was different in 2017 from what was recorded in his IEA and it appears he was paid minimum wage in accordance with the Minimum Wage Act 1983.

[6] An award was made in the substantive determination for wage arrears for both Applicants for the time period when pay slips were in existence for the difference between the farm diaries and the payslips. Mr Ferris Jr. lived in accommodation on the property and this is not dealt with in the individual employment agreement, there is an assertion some of the diaries were not completed contemporaneously, and there was no evidence provided as to informal arrangements to compensate for the seasonal nature of farm work that may or may not have been agreed to by the parties. Therefore no further award for wage arrears is made.

### **Costs**

[7] The Authority received submissions on behalf of both parties. The Applicants submit the following factors justify an uplift:

- the length of time of the proceedings (causing additional time and attendances from counsel);
- the adversarial nature of the case;
- the number of witnesses exceeded the time available and legal submissions were not made at the investigation meeting;
- additional preparation and time required to review submissions to assist the Authority in issuing a written determination without the necessity of a further hearing.

[8] The Respondent submits no uplift is justified. These proceedings have continued to put the operation and affairs of Nuhiti Q at risk and it was justified in making the decision to exit farming that led to the decisions to make the Applicants redundant. The Respondent has cooperated with the various applications made by the Applicants including having the matters heard jointly.

[9] Costs are a matter of discretion. The discretion is to be exercised in accordance with principle and not arbitrarily. The main principle in the exercise of the discretion is that costs follow the event. If a party is successful, they will be entitled to an award of costs. The Applicants were successful.

[10] The Authority's investigation meeting time amounted to two full days. Written submissions were timetabled.

[11] The starting point for costs based on the Authority's daily tariff is \$4,500.00 for the first day and \$3,500.00 for the second day. The Authority can from that starting point of \$8,000.00 consider whether there are factors justifying an increase or decrease in costs.

[12] Despite the helpful submissions I do not see a need to depart from the Authority's notional daily tariff. There was no conduct by the Respondent that unnecessarily increased the Applicants' costs. Both matters were heard together and the length of the hearing reflects any additional time spent due to there being two applicants. Costs are not typically awarded for mediation. A small uplift is appropriate to reflect additional work required before written submissions were lodged after the investigation meeting and to reflect the filing fee of \$71.56.

### **Orders**

[13] I order that the Proprietors of Nuhiti Q pay costs to Michael Ferris Sr and Michael; Ferris Jr. in the amount of \$10,000.00 and the filing fee of \$71.56.

Sarah Kennedy-Martin  
Member of the Employment Relations Authority