

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2023] NZERA 607
3150425

BETWEEN RAHID AMIN
Applicant

AND HUTT AND CITY TAXIS
LIMITED
Respondent

3152401

AND BETWEEN HUTT AND CITY TAXIS
LIMITED
Applicant

AND RAHID AMIN
Respondent

Member of Authority: Rowan Anderson

Representatives: Matt Belesky, counsel for Rahid Amin
Amabir Singh, in person for the Hutt and City Taxis
Limited

Investigation Meeting: On the papers

Submissions received: 18 September 2023 and 2 October 2023 from Mr Amin
25 September 2023 and 2 October 2023 from Hutt and
City Taxis Limited

Determination: 17 October 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] On 31 August 2023 the Authority issued a determination in which I found that Rahid Amin was unjustifiably disadvantaged in, and unjustifiably dismissed from, his employment¹

¹ *Rahid Amin v Hutt and City Taxis Limited* [2023] NZERA 493.

[2] Costs were reserved. The parties have not been able to agree on costs, and Mr Amin now asks the Authority for orders as to the costs he incurred in pursuing his claims against Hutt and City Taxis Limited (HCTL).

[3] Mr Amin seeks a total contribution towards his costs of \$25,000. Mr Amin claims that his total costs were \$31,509.33 excluding GST and that he also incurred disbursements totalling \$661.67. Invoices were submitted as to those claimed sums.

[4] HCTL submits that the costs sought should not be awarded and that there should be a downwards adjustment to the Authority's daily tariff, including for the following reasons:

- (a) Mr Amin is seeking \$25,000 of a total of \$31,509.33. HCTL submit that rather than seeking a contribution to his costs that Mr Amin is seeking HCTL pay almost all of his costs;
- (b) HCTL has already suffered significant financial loss and that HCTL would face hardship if the costs sought were awarded; and
- (c) That Mr Amin's behaviour was a contributing factor.

Costs principles

[5] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.²

[6] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that Calderbank offers may be taken into account, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.

[7] The daily tariff is usually taken as a starting point,³ although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ Employment Relations Authority Practice Direction, August 2023, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>

Consideration

Costs to follow the event

[8] Mr Amin was found to have been unjustifiably dismissed from, and unjustifiably disadvantaged in, his employment. Standing back and looking at the proceedings in the round, Mr Amin was successful in pursuing his claims and is entitled to a contribution towards his costs. I do not consider this a matter involving genuinely mixed success. It is noted, having regard to HCTL's submissions, that Mr Amin is entitled to a contribution towards his costs rather than full or indemnity costs.

Application of the daily tariff

[9] Mr Amin claims that the starting point for the daily tariff is that the matter involved an investigation meeting of four full days and therefore a starting point of \$15,000 (\$4,500 for the first day, \$3,500 for the second day).

[10] The investigation meeting was held over a total of four days on 2, 3, 4 and 16 August 2022. I agree that the appropriate starting point is \$15,000.

GST status

[11] Mr Amin submits that an uplift is appropriate on the basis that he is not GST registered and so is unable to offset or recover GST. I consider that the Authority's daily tariff approach is GST neutral, noting it has been put in place and revised in the context of it being clear that many of the parties claiming costs under that approach would not be GST registered, and decline to order an uplift based on GST status.

Calderbank offers

[12] Mr Amin submits that he made two effective Calderbank offers, one on 23 August 2021, and the other on 21 October 2021. He claims an uplift in the range of \$3,000 would be appropriate in the circumstances having regard to those offers.

[13] Both settlement offers were made well prior to the investigation meeting, or any other substantive steps being required in the Authority. Additionally, both offers provided ample time for consideration of their terms, being seven days and 11 days respectively. The proposed terms included a costs component that was separately identified as part of each offer.

[14] I consider that the Calderbank offers made were in clear terms and were otherwise reasonable. The offers were made well before any substantive steps were required in terms of the Authority's investigation. The offers were clearly marked "without prejudice save as to costs" and Mr Amin has been successful in his application being awarded significantly more than the sums sought by way of the Calderbank offers.

[15] I consider that both offers, and the rejections of them by HCTL, should be taken into account. Any uplift should be modest. However, I consider the offers made of significance given their timing and the sums included having been considerably less than that ultimately awarded. An uplift of \$2,000 is appropriate in the circumstances.

HCTL's withdrawn claim

[16] Mr Amin seeks an uplift, or alternatively a separate costs award, in relation to HCTL's pursuit of a claim that was ultimately withdrawn. HCTL confirmed at the investigation meeting that it did not press the claims made in the separate statement of problem.⁴

[17] I do not consider the late withdrawal of HCTL's claims impacted the duration of the investigation meeting. However, I accept that the late withdrawal of the claims resulted in some additional and unnecessary preparation for the proceedings and submissions. I consider an uplift of \$500 appropriate in the circumstances.

Preparation of the common bundle

[18] Mr Amin seeks an uplift of \$2,075.75 in relation to the preparation of the common bundle used in the proceedings. In the alternative, Mr Amin submits that an uplift of approximately \$1,000 would be fair on the basis of the parties sharing the costs of preparation.

[19] As recorded in directions issued on 14 April 2022, the parties agreed to cooperate in preparing a common bundle of documents. I decline to make any upward adjustment relating to the preparation of the common bundle.

⁴ *Rahid Amin v Hutt and City Taxis Limited* [2023] NZERA 493 at [4].

Late production of documents

[20] Mr Amin seeks an uplift on the basis that HCTL introduced additional documents at late notice. This was followed by the lodgement of a fifth volume of the common bundle at late notice. Whilst the documents were not lodged in accordance with the timetable directions originally made, I do not consider an uplift is warranted in the circumstances. The relevant documents were limited in nature and quantity, and I do not consider the consideration of the same as justifying an uplift to the usual daily tariff.

Complexity of proceedings

[21] Mr Amin seeks a modest uplift on the basis of the proceedings involving some degree of complexity, that complexity said to have arisen particularly as to sanctity of contract issues. Ultimately, whilst there were factors leading to the proceedings being fairly lengthy, I do not consider there were any issues of complexity such that would warrant a departure from the daily tariff.

Ability to pay/hardship

[22] HCTL submits that its financial situation is such that any order for costs should be reduced. In support of that submission, it lodged letter from HCTL's accountant as to its financial position. The accountants letter recorded that, in relation to the ability to make payment of a sum over \$5,000 as a lump sum, that "[requiring HCTL] to pay a one off amount of this level, would put the company under serious hardship".

[23] HCTL also lodged a notice of proceeding for putting the company into liquidation that was filed in the High Court on 9 December 2022.

[24] Mr Amin submits that sufficient evidence has not been provided by HCTL that would support a claim that it has an inability to pay costs that might be awarded against it. He submits that no evidence of assets, liabilities, income and expenditure have been provided such as might otherwise support such a claim. Further, it is submitted that such evidence may go to the issue of compliance/enforcement as opposed the quantum of any award.

[25] I am not satisfied that there is sufficient evidence of an inability to pay on the part of HCTL. The correspondence from HCTL's accountant is insufficient to make a finding that HCTL is unable to pay. Regardless, on the limited information provided, any consideration of hardship would require the interests of Mr Amin to be taken into account. What is clear is that Mr Amin has incurred significant legal fees in pursuit of his claims. I am not satisfied that any hardship claimed by HCTL is of such significance that it would be appropriate to hold its interests over Mr Amin's.

Mr Amin's alleged contribution

[26] HCTL submits that both parties were at fault and that Mr Amin's behaviour was a contributing factor. HCTL referred to various excerpts of the Authority's determination as to what it submits are relevant examples of contribution. I do not accept HCTL's submissions. The issue of contribution, so far as it was relevant to the substantive claims and remedies sought, was dealt with in the substantive determination in which I declined to make any reduction to the compensation ordered on account of alleged contribution.⁵

Expenses

[27] Mr Amin claims disbursements totalling \$661.69 as follows:

- (a) \$71.56 as reimbursement of the filing fee;
- (b) \$281.75 in relation to the production of transcripts of recordings of relevant meetings;
- (c) \$31.80 in travel expenses for local counsel; and
- (d) \$276.58 representing the cost of tab dividers for copies of the common bundle.

[28] Having regard to the Authority's approach to costs and the daily tariff, I do not consider an order should be made requiring HCTL to pay the claimed expenses relating to travel (within central Wellington), tabbing services, nor in relation to the production of transcripts. However, Mr Amin is entitled to reimbursement of the filing fee.

⁵ *Rahid Amin v Hutt and City Taxis Limited* [2023] NZERA 493, at paragraphs [164] to [169].

Orders

- [29] I order Hutt and City Taxis Limited to pay Mr Amin, within 28 days:
- (a) the sum of \$17,500 as a contribution towards the costs he incurred in pursuing his claims; and
 - (b) the sum of \$71.56 in disbursements.

Rowan Anderson
Member of the Employment Relations Authority