

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2023] NZERA 83
3161641

BETWEEN COREY RUDOLPH
Applicant

AND MINEMET IRON AND METALS
LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Robert Morgan, advocate for the Applicant
Amy Keir, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 19 December 2022 from the Applicant
23 January 2023 from the Respondent

Date of Determination: 22 February 2023

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 13 December 2022, I found that Minemet Iron and Metals Limited had failed to pay Corey Rudolph two weeks' notice pay that he was entitled to receive and I ordered it to pay that to Mr Rudolph. I also found that Minemet had not unjustifiably dismissed Mr Rudolph.¹

[2] In my determination I reserved costs so that the parties could try to agree costs. The parties were unable to agree and now both parties seek costs.

¹ *Corey Rudolph v Minemet Iron and Metals Limited* [2022] NZERA 662.

Application for costs

[3] The advocate for Mr Rudolph seeks an award of costs based on applying the daily tariff to a half day Investigation Meeting. The advocate says whilst Mr Rudolph was not successful with his unjustified dismissal claim he was successful with his wage arrears claim and this success is sufficient for him to be awarded costs on the basis of costs following the event (i.e., success).

[4] Counsel for Minemet says:

- (a) Minemet was successful in defending the bulk of Mr Rudolph's claims, that is the unjustified dismissal claim.
- (b) Mr Rudolph's wage arrears claim – to be paid sick leave during his notice period – was resolved in Mr Rudolph's favour but I found that Minemet had not acted deliberately or in a blameworthy way in relation to its conclusion that sick pay was not payable.
- (c) Mr Rudolph's claim for wage arrears was not clearly formulated and was accompanied by, or part of, the baseless unjustified dismissal claim - had it been expressed more clearly and without the unjustified dismissal claim this may have been capable of resolution short of a claim being lodged.

[5] For these reasons counsel for Minemet says I should apply a nuanced approach to determining the successful party and award costs to Minemet.² And this means Minemet should be awarded costs for a half day Investigation Meeting of \$2,250.00.

Analysis

Costs in the Authority

[6] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Act. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.³

² Applying the approach set out by the Employment Court in *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

³ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

Costs for Mr Rudolph

[7] The starting point is that costs should follow the event.

[8] The fact that Mr Rudolph was not completely successful with all of his claims against Minemet does not disrupt the premise of success for Mr Rudolph. Applying *William Coomer v JA McCallum and Son Limited*, I am satisfied that Mr Rudolph was sufficiently successful for the purposes of costs.⁴

Applying the daily tariff

[9] The next question is whether I should follow the normal practice of the Authority when setting costs, which is applying a set amount for each day of the Investigation Meeting calculating quantum based on the time spent in the Investigation Meeting; this is applying the daily tariff.

[10] In this case there is no reason to depart from applying the daily tariff. The Investigation Meeting took one half day so the starting point for any cost award is \$2,250.00 – based on the current daily tariff of 4,500.00 for the first day of an Investigation Meeting.

Adjusting the daily tariff

[11] The final question for me to consider is whether the daily tariff amount should be adjusted to reflect any relevant circumstances of the case.

[12] In this case it is appropriate for me to adjust the daily tariff to reflect the limited success Mr Rudolph had.

[13] Given all of the circumstances I am satisfied that the daily tariff should be reduced to \$1,000.00.

Disbursements

[14] Mr Rudolph is entitled to be paid the filing fee of \$71.56.

⁴ *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

Order

[15] Minemet is to pay Mr Rudolph \$1,000.00 as a contribution to his costs in this matter and disbursements of \$71.56.

Peter van Keulen
Member of the Employment Relations Authority