

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2023] NZERA 95
3143964

BETWEEN	ZACHARY MARCHAND Applicant
AND	TYRES 2 GO BLENHEIM ROAD LIMITED Respondent

Member of Authority:	Philip Cheyne
Representatives:	Alex Kersjes, advocate for the Applicant John Taylor for the Respondent
Submissions Received:	19 January 2023 from the Applicant
Submissions Received:	31 October 2022 from the Applicant No submissions from the Respondent
Date of Determination:	1 March 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] On 6 January 2023 I found that Mr Marchand had a personal grievance against Tyres 2 Go Blenheim Road Limited and ordered the company to pay Mr Marchand compensation and reimbursement. I reserved costs, to be dealt with following submissions in accordance with a timetable, if not agreed.

[2] Mr Kersjes for the Applicant lodged and served written submissions in accordance with the timetable. Nothing has been received from Tyres 2 Go Blenheim Road Limited (Tyres 2 Go). The time for its reply has gone past. This determination resolves the question of costs.

[3] Mr Marchand succeeded with his claim and is entitled to costs on ordinary principles. There is no reason to depart from that approach.

[4] The Authority often assesses costs on the basis of a daily tariff. If that approach applied here, I would set costs at half the tariff for the first day as the investigation meeting took about half a day. Costs on that basis might be \$2,250.00.

[5] I am asked to order costs of \$6,000.00 rather than applying the daily tariff, for two reasons.

[6] The first reason is that Mr Marchand made a number of offers to resolve his claim for amounts of compensation less than he was eventually awarded. The offers were all made without prejudice, except as to costs.

[7] The picture is more complicated than just that Mr Marchand recovered more compensation for his personal grievance claim than he would have been prepared to settle before the investigation meeting. The claim was commenced, then a later amended statement of problem was lodged. The amendment included arrears, minimum entitlements and penalty claims. The amended claims were later discontinued, leaving only the personal grievance claim for determination.

[8] Given those complications, I consider this is not a case to apply anything other than a very modest uplift from a daily tariff approach based on the without prejudice except for costs offers.

[9] The second ground advanced for an uplift has more substance. Tyres 2 Go's conduct during the proceedings added unnecessarily to Mr Marchand's costs. The company produced three letters it claimed had been given to Mr Marchand prior to the dismissal. The text of the letters (if accurate) would have answered grounds on which Mr Marchand claimed that he had been unjustifiably dismissed. Mr Marchand's evidence was that he had not been given these letters during his employment. I allowed Tyres 2 Go an opportunity to obtain specialised IT evidence to prove that the documents existed and had been printed on or about the dates shown in the letters, to support the company's contention that it had given them to Mr Marchand. The investigation meeting was adjourned, with a timetable for the specialist report followed by written submissions. Tyres 2 Go later sought several extensions to the timetable. Eventually, after Tyres 2 Go defaulted, written submissions were provided for Mr Marchand.

[10] In summary, rather than dealing with submissions on the day, the investigation meeting was adjourned. Mr Marchand's representative later had to comment on Tyres 2 Go's

requests. He later compiled and provided written submissions. Tyres 2 Go's limited compliance with the Authority's investigation before the meeting also added unnecessarily to the time spent by the representative and the costs incurred by Mr Marchand.

[11] Both these factors are properly accounted for by treating the investigation meeting as if it continued into the afternoon, rather than finishing around lunchtime.

[12] For that reason, I set costs at \$4,500.00, the full rate for one day. Mr Marchand is also entitled to recover from Tyres 2 Go \$71.56 to cover the cost of the lodgement fee.

[13] Tyres 2 Go Blenheim Road Limited is to pay Zachary Marchand costs of \$4,571.56.

Philip Cheyne
Member of the Employment Relations Authority