

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 113
3116272

BETWEEN JOHN CHARLES WRIGHT
Applicant
AND OTIRA STAGECOACH HOTEL
LIMITED
Respondent

Member of Authority: Peter van Keulen
Representatives: Jeremy Kaye, counsel for the Applicant
Lester Rowntree for the Respondent
Investigation Meeting: On the papers
Submissions Received: 24 January 2024 from the Applicant
No submissions received from the Respondent
Date of Determination: 27 February 2024

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 19 January 2024 I found that Otira Stagecoach Hotel Limited (OSH) had unjustifiably dismissed John Wright.¹ I awarded remedies to Mr Wright for this unjustifiable dismissal.

¹ *John Charles Wright v Otira Stagecoach Hotel Limited* [2024] NZERA 29.

[2] In my determination I reserved costs; Mr Wright now seeks costs.

Application for costs

[3] Counsel for Mr Wright seeks an award of costs on an indemnity basis; this being \$19,194.06. Counsel says indemnity costs are justified given the way in which OSH conducted its defence to Mr Wright's claim.

[4] No cost submissions were received from OSH.

Analysis

Costs in the Authority

[5] 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.²

Costs for Mr Wright

[6] The first principle relating to costs in the Authority is that an award of costs should follow the event, that is, a successful party should normally be awarded costs.

[7] Mr Wright was successful with his claim and is entitled to an award of costs.

Applying the daily tariff

[8] The quantum of a costs award in the Authority is usually calculated by applying the daily tariff. The daily tariff is an amount awarded for each day of an investigation meeting at the rate of \$4,500 for the first day of an investigation meeting and \$3,500 for every additional day.

² For further information about the factors considered in assessing costs, see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

[9] I can depart from applying the daily tariff in certain circumstances, such as where the conduct of a case justifies actual or indemnity costs being awarded.

[10] Counsel for Mr Wright seeks costs on an indemnity basis for two reasons:

- (a) Mr Wright's claim was based on an assault by Lester Rowntree who was the director and shareholder of OSH and was effectively the owner operator of the hotel that OSH owned and where Mr Wright worked. Counsel says, essentially, that OSH's defence of this matter was misconceived and entirely without merit as it was based on an assertion that Mr Rowntree did not assault Mr Wright despite Mr Rowntree having been convicted of assault in the District Court.
- (b) OSH's conduct of its defence required additional work because of the way Mr Rowntree submitted his evidence and the additional requests he made for further evidence to be obtained and consequently further submissions to be made.

[11] In terms of awarding indemnity costs I must be satisfied that OSH's conduct of its defence meets the standard for awarding indemnity costs set out in *Bradbury v Westpac Banking Corp.*³ On my review of the course of the investigation and the steps taken to resolve the claim, I conclude that there is no basis to award indemnity costs. The behaviour complained of does not meet the standard set out by the Court of Appeal in *Bradbury*.

[12] I am satisfied that the daily tariff is the correct approach to setting costs in this matter.

[13] My investigation into this matter took one day and therefore the initial quantum based on the daily tariff is \$4,500.

³ *Bradbury v Westpac Banking Corporation* [2009] NZCA 234

Adjusting the daily tariff

[14] I must now consider if the initial quantum of \$4,500 should be adjusted. The daily tariff amount can be adjusted for various reasons – this includes where a party's conduct of the claim or defence has unnecessarily increased the other party's costs.

[15] But when exercising my discretion to adjust the daily tariff amount, I must consider the following:

- (a) Costs awards in the Authority will be modest.
- (b) Costs are not to be used as a punishment or an expression of disapproval of a party's conduct although conduct which increases costs unnecessarily can be taken into account.
- (c) A decision on quantum should be also in line with principle and not determined arbitrarily bearing in mind the equity and good conscience jurisdiction of the Authority.

[16] So, in order to increase the daily tariff in this case I need to be satisfied that there was conduct by OSH that unnecessarily increased Mr Wright's costs. If there is then I must consider if that is sufficient to support an increase when costs in the Authority should be modest and determined in line with principles and increases should not be about punishing an unsuccessful party for their conduct.

[17] I am satisfied that there was additional work required by Mr Wright and his counsel in response to the way OSH conducted its defence. I am also satisfied that this additional work was unnecessary and that Mr Wright should receive some additional award of costs to reflect that.

[18] Therefore, I conclude that there is a basis to increase the daily tariff in terms of the costs Mr Wright is entitled to. I set that increase at \$3,000.

Conclusion

[19] The daily tariff is currently \$4,500 for the first day of the investigation meeting and this should be increased by \$3,000 to reflect the unnecessary elements of the way OSH conducted its defence.

Order

[20] Otira Stagecoach Hotel Limited is to pay John Charles Wright \$7,500 as a contribution to his costs in this matter.

Peter van Keulen
Member of the Employment Relations Authority