

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 151
3187559

BETWEEN VANESSA CHANDLER
Applicant

AND QUEENSTOWN LOCAL LAUNDRY
SERVICES LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Alex Kersjes, advocate for the Applicant
Jody King, for the Respondent

Investigation Meeting: On the papers

Submissions Received: 27 February 2024 from the Applicant
Nothing from the Respondent

Date of Determination: 18 March 2024

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] By way of a determination of 14 February 2024, the Authority determined that Vanessa Chandler was unjustifiably dismissed and her former employer Queenstown Local Laundry Services Limited (QL) was ordered to pay Ms Chandler lost wages and wage arrears in the amount of \$38,325 gross and \$20,000 compensation pursuant to section 123 (1)(c)(i) of the Employment Relations Act 2000 (the Act) in six equal monthly instalments with the last payment falling due on 30 August 2024.¹

¹ *Vanessa Chandler v Queenstown Local Laundry Services Limited* [2024] NZERA 83.

The application for costs

[2] In a memorandum of 27 February 2024, Ms Chandler's advocate seeks costs of \$8,437.50 including disbursements (airfare and accommodation of advocate in the amount of \$873.76). In seeking this uplift on the Authority's normal approach, Mr Kersjes cited and included a copy of a rejected Calderbank offer made on 31 January 2023. In seeking disbursements for Ms Chandler, it was suggested she had engaged representation from outside Queenstown because of a limited pool of representatives in Queenstown.

[3] Ms King did not provide a costs submission other than to indicate QL was still struggling with profitability issues post-Covid.

Assessment

The Authority's costs approach

[4] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000.

Costs for Ms Chandler

[5] A starting point is that costs normally follow the event. As Ms Chandler was successful in her personal grievance and obtained significant compensatory remedies an award of costs is appropriate.

Applying the daily rate

[6] The Authority's approach is to apply a notional daily rate or depart from that rate if persuaded that circumstances or other factors, require an upward or downward adjustment.² The current daily rate is \$4,500 for the first day of an investigation meeting.

Adjusting the daily rate

[7] Given the investigation meeting started late and was less than a day (concluding at 2pm) I would normally consider applying a proportion of the normal daily rate but I accept an upward

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

adjustment is warranted as Ms King unnecessarily delayed matters by not providing documents sought by the Authority until the investigation meeting or thereafter. This delay necessitated submissions being timetabled and Ms Chandler's advocate having to consider new material not available at the investigation meeting.

Impact of settlement offer

[8] The making of an offer of settlement in the form of a *Calderbank* offer (without prejudice except as to costs) is also a relevant factor to be weighed when considering costs where such does not better the award made by the Authority. Here, a settlement was offered by Ms Chandler in a timely fashion on 31 January 2023, shortly after Ms King had initially refused to attend mediation. It was a very modest offer (\$8,000 compensation and \$4,000 + GST costs) and Ms King aggravated settlement efforts by not attending directed mediation on two occasions and during the investigation meeting she conceded to not seeking legal advice at any time during this dispute when it would have been sensible to do so.

[9] Where there is a problem for QL, is the offer to settle was significantly less than the eventual Authority award. Ms King did not provide the Authority with evidence of her response on behalf of QL, so I am unable to assess any counteroffer as I only have evidence that at the time the offer was made, it evidently did not settle the matter.

[10] Whilst generally the Authority has a low-level jurisdiction hence a focus on a notional daily rate in awarding costs, there is authority to suggest a 'steely' approach to *Calderbank* offers is required in the broader public interest.³ The Employment Court has held that a *Calderbank* offer sometimes leads to an uplift in costs for the successful party seeking such to encourage early settlement and the Authority has likewise approached costs in a similar vein.⁴

[11] I intend to consider the *Calderbank* offer made by Ms Chandler. She offered to settle at an early stage of litigation and then succeeded in litigation in significant excess of the settlement offer. In addition, I am persuaded that the failure to disclose material in a timely and as directed fashion, occasioned Ms Chandler to incur additional costs. An uplift in the normal daily rate is warranted and in all the circumstances, I consider it equitable in all the circumstances, to award

³ *Bluestar Print Group (NZ) Ltd v Mitchell* [2010] NZCA 385.

⁴ *Stevens v Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 137 at [24].

Ms Chandler a full daily rate of \$4,500 and an uplift of \$2,500 to take account of the rejected settlement offer and the Authority filing fee.

[12] In respect of claimed disbursements, although the Authority does not usually award such (apart from the Authority filing fee) where a dispute arises in an area where representation is available, there is some limited discretion to depart from this in exceptional circumstances. Here however, a bare claim that there is a “limited number of representatives in Queenstown” can not succeed without further elaboration. I decline to order additional disbursements.

Order

[13] Queenstown Local Laundry Services Limited is to pay Vanessa Chandler a contribution to legal costs in the amount of \$7,000 and to reimburse Ms Chandler the Authority filing fee of \$71.55, within 28 days of this determination being issued.

David G Beck
Member of the Employment Relations Authority