

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 719
3275320

BETWEEN MOIRA LAMOND
Applicant

AND RECHARGE ENTERPRISES
LIMITED
First Respondent

AND GARETH WATT
Second Respondent

Member of Authority: David G Beck

Representatives: Kim Ahern, advocate for the Applicant
Gareth Watt, for the Respondent

Investigation Meeting: On the papers

Submissions Received: 24 September 2024 from the Applicant
Nothing from the Respondent

Date of Determination: 3 December 2024

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] By way of a Determination of 29 August 2024, the Authority determined that Moriah Lamond was unjustifiably dismissed by Recharge Enterprises Limited was ordered to pay Ms Chandler lost wages and wage arrears in the amount of \$2,224.50 gross and \$15,000 compensation pursuant to section 123 (1)(c)(i) of the Employment Relations Act 2000 (the Act) with interest.¹ The Authority did not find that Gareth Watt had personal liability for the amounts awarded.²

¹ *Moira Lamond v Recharge Enterprises Limited and Gareth Watt* [2024] NZERA 520.

² At para [52].

The application for costs

[2] In a memorandum of 24 September 2024, Ms Lamond's advocate sought costs of \$7,500 for the one day investigation meeting and disbursements; being the filing fee and the advocate's travel and accommodation costs. In seeking this uplift in costs on the Authority's normal daily tariff approach, Ms Ahern cited and included a copy of a rejected Calderbank offer made on 8 June 2024. Ms Ahern in seeking disbursements for Ms Lamond engaging representation from outside Central Otago where Ms Lamond resides, gave no justification other than evidence of the flight and accommodation costs incurred (\$728.28).

[3] Mr Watt did not provide a costs submission despite being giving considerable time to do so, other than indicating that his business was still struggling with profitability and debt issues. I was however, provided with no documentation to verify Mr Watt's assertions.

Assessment

The Authority's costs approach

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 Lamond

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

Applying the daily rate

[5] The Authority's approach is to apply a notional daily rate and only adjust that rate if persuaded that circumstances or other factors require an upward or downward adjustment.³ The current daily rate is \$4,500 for the first day of an investigation meeting.

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

Adjusting the daily rate

[6] The investigation meeting took one day in Dunedin and despite a prior lack of responses and failing to adhere to timetabling, Mr Watt provided a written statement in the week before the investigation meeting and he did participate during the meeting.

Impact of a settlement offer

[7] The making of an offer of settlement in the form of a *Calderbank* offer (without prejudice except as to costs), is a relevant factor to be weighed when considering costs where such does not better the award made by the Authority. Here the settlement offer was made on 18 June 2024. It was a relatively modest offer in the circumstances and less than what was awarded to Ms Lamond by the Authority (\$8,000 and a costs contribution of \$4,000 plus GST). Unfortunately, Mr Watt provided no evidence of any response to the offer and during the investigation meeting conceded he had not sought legal advice at any time during this dispute when it would have been sensible to do so.

[8] Whilst generally the Authority has a low-level jurisdiction hence a focus on a notional daily rate for awarding costs, there is authority to suggest a ‘steely’ approach to *Calderbank* offers is sometimes required in the broader public interest.⁴ The Employment Court has held that a *Calderbank* offer may lead to an uplift in costs for the successful party seeking such to encourage early settlement and the Authority has approached costs in a similar vein.⁵

[9] I intend to consider the *Calderbank* offer made by Ms Lamond. She offered to settle, albeit at a later stage of the proceedings (mediation occurred on 27 March 2024), and then succeeded in litigation in excess of the settlement offer. In addition, I am persuaded that a failure of Mr Watt to disclose relevant information in a timely fashion, occasioned Ms Lamond to incur additional costs. A modest uplift in the normal daily rate is warranted and in all the circumstances, I consider it equitable to award Ms Lamond the full daily rate of \$4,500 and an uplift of \$500 to take account of the rejected settlement offer.

⁴ *Bluestar Print Group (NZ) Ltd v Mitchell* [2010] NZCA 385.

⁵ *Stevens v Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 137 at [24].

[10] In respect of claimed disbursements, 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 cannot succeed without further elaboration. I decline to order disbursements.

Orders

[11] Recharge Enterprises Limited is to pay Moriah Lamond a contribution to legal costs in the amount of \$5,000. and to reimburse Ms Lamond the Authority filing fee of \$71.55, within 28 days of this determination being issued.

David G Beck
Member of the Employment Relations Authority