

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2024] NZERA 758
3272279

BETWEEN BEATRICE PETITDEMANGE
Applicant

AND ANDREA'S HAIR DESIGN &
BEAUTY THERAPY 2000
LIMITED
Respondent

Member of Authority: Geoff O'Sullivan

Representatives: Hayley Johnson, counsel for the Applicant
Digby Livingston, advocate for the Respondent

Investigation meeting: on the papers

Submissions received: Up to and including 10 December 2024

Determination: 18 December 2024

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 1 November 2024, I issued a determination concluding Ms Petitdemange had a personal grievance in that she had been unjustifiably dismissed.¹ Costs were reserved and the parties were encouraged to resolve any issue of costs between themselves. They have been unable to do so and Ms Petitdemange, as the successful party, now seeks a contribution towards costs incurred.

[2] The Authority generally uses a daily tariff when addressing a costs claim. The current starting point is \$4,500.00 for an investigation's first day. From there

¹ [2024] NZER 649.

adjustments may be made depending on the circumstances. In this case, a daily tariff equates to \$4,500.00 for a day's hearing.

The parties' submissions

[3] On behalf of Ms Petitemange, it is submitted that she has incurred costs totalling \$13,992.69, including a disbursement of \$71.56 for the filing of her grievance. It is submitted that although the investigation meeting itself took a full day, submissions were also received after the event, up to and including 12 August 2024. It is submitted that a further quarter day should be allowed to take account of the time spent on the further submissions. It is submitted therefore the starting point for tariff costs is \$5,625.00.

[4] It is further submitted that a valid Calderbank offer was submitted some time before the investigation meeting and should have been accepted. Therefore, an uplift in the tariff to \$9000.00 is asked for.

[5] On behalf of the respondent, Mr Livingston submits that there is no ground to support an uplift simply because the parties filed submissions after the investigation meeting. In respect of the Calderbank offer made, Mr Livingston submits that any uplift should be limited to a 25 percent increase on the basis that any greater sum would be seen as punitive.

[6] He also says because of the dire financial circumstances of the respondent, it would not be in a position to immediately pay any costs awarded by the Authority. Some evidence has been provided which gives support to its claim of financial stress.

[7] I do not regard the offer made by email on 20 June 2024 to be a valid Calderbank offer. It was sent two days before the investigation meeting and, further, does not provide any information as to when the respondent would have needed to accept it. At the most, the respondent would have had two days. Generally, a Calderbank offer would need to give the recipient sufficient time to properly consider the offer. That has not occurred in this case.

[8] Further, I do not see the filing of submissions after the hearing, which both parties agreed to, as providing grounds for an uplift from the normal tariff on this occasion.

Orders

[9] For the above reasons I order Andrea's Hair Design & Beauty Therapy 2000 Limited to pay Ms Petitemange, within 14 days of this determination, the sum of \$4,500.00 as a contribution towards costs, together with the filing fee of \$71.56.

Geoff O'Sullivan
Member of the Employment Relations Authority