

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 780
3254839

BETWEEN LYNDON BARLOW
Applicant

AND CBT SOUTH LIMITED
Respondent

Member of Authority: Andrew Dallas

Representatives: Alex Kersjes, advocate for Applicant
Mary-Jane Thomas, counsel for Respondent

Determination: 24 December 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination issued on 19 November 2024¹, the Authority made findings about Lyndon Barlow's employment relationship problem with CBT South Limited (CBT). Mr Barlow was awarded reimbursement of lost wages under s123(1)(b) of the Act in the sum of \$13,572 gross and compensation under s123(1)(c)(i) in the sum of \$13,500.

[2] The Authority reserved the issue of costs and Mr Barlow was given 28 days from the date of the determination to lodge a memorandum on costs in the event such was necessary.² A memorandum on costs was subsequently lodged by Mr Barlow on 17 December 2024. CBT lodged a memorandum in reply on 24 December 2024.

¹ *Barlow v CBT South Limited* [2024] NZERA 685

² Above n 2 at [80]

Mr Barlow's claim for costs

[3] As the investigation meeting lasted one day, Mr Barlow would be entitled to seek tariff costs of \$4,500.³ However, Mr Barlow says the starting point should be \$5,375.00, being an extra quarter day for the preparation of submissions.

[4] Further, Mr Barlow applies for \$10,000 in costs (an uplift of \$5,500) as a contribution to total costs of \$17,010.29 based on unreasonable litigation conduct by CBT in respect of a "Calderbank offer" made on 23 August 2024. The offer proposed to settle for a total sum of \$18,000 (including a contribution to the costs of representation of \$5,000).

CBT's position

[5] CBT said the starting point for any consideration costs was \$4,500, being the Authority's tariff for a one day investigation meeting. It also took issue with the characterisation of its conduct and observed it had made the first settlement offer of \$10,000 on 14 March 2024, which it said was not responded to by Mr Barlow. CBT accepted that it would be liable for some costs and further accepted "a modest uplift" was appropriate in the circumstance of the matter. However, CBT took issue with Mr Barlow's "quantum".

Outcome

[6] The tariff for a one day investigation meeting, as this was, is \$4,500. The starting point is not \$5,375.00 or some other preferred figure. And in this respect, I accept CBT's submission.

[7] I accept a valid offer to compromise was made by Mr Barlow, which was rejected by CBT, and he was successful in obtaining a higher sum from the Authority.

[8] In all the circumstances of the case I find Mr Barlow is entitled to \$4,500 as a contribution to its costs plus an uplift of \$1,500 having regard to the rejection of a reasonable offer to settle. So then, \$6,000 must be paid by CBT to Mr Barlow. Having regard to the time of year, this must be paid within 28 days of the date of this determination.

Andrew Dallas
Chief of the Employment Relations Authority

³ See: www.era.govt.nz/determinations/awarding-costs-remedies/