

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2016] NZERA Wellington 133
5458730

BETWEEN MICHAEL CULL
 Applicant

AND ANGLA HOLDINGS LIMITED
 t/a ANGLA AUTOMOTIVE
 Respondent

Member of Authority: Michael Loftus

Representatives: Alan Knowsley, Counsel for Applicant
 Graeme Gowland, Counsel for Respondent

Submissions Received: 27 September and 3 November 2016 from Applicant
 1 November 2016 from Respondent

Determination: 4 November 2016

COSTS DETERMINATION OF THE AUTHORITY

[1] On 27 July 2016 I issued a determination¹ concluding Mr Cull had a personal grievance in that he had been unjustifiably dismissed by the respondent, Angsla Holdings Limited (Angsla). There was also a conclusion he was owed unpaid wages, holiday and sick pay but he was unsuccessful with a penalty application.

[2] The remedies were subsequently reduced by agreement of the parties² but the issue of costs in the Authority remains. These had been reserved and Mr Cull, as the successful party, now seeks a contribution toward those he incurred in pursuing his claim. Normally the Authority will use a daily tariff approach when addressing a costs claim.³ The normal starting point, at least in this case, is \$3,500 per day and from there adjustment may be made depending on the circumstances.

¹ [2016] NZERA Wellington 89

² *Angsla Holdings Limited v Cull* [2016] NZEmpC 141

³ refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808

[3] The investigation took a day and that was followed by a subsequent exchange of written submissions. That would in the normal course of events see an award in the order of \$5,000 assuming about half a day for the preparation and delivery of submissions as Mr Knowsley does when explaining his client's claim.

[4] Mr Cull, however, seeks a bit more - \$6,500. The difference arises from a submission the issues were complex and the factual material extensive which required additional work justifying an increase in the tariff to \$5,000 for the day of hearing.

[5] Angsla is of the view the tariff should be applied and the threshold for an uplift has not been met. Various aspects of the evidence and investigation are then referred to in support of this contention.

[6] Having considered the points raised by both parties I must say I agree with Mr Gowland's submission this was essentially a normal type of case and an uplift is difficult to justify. That said I note Mr Gowland suggests a contribution of \$3,500 but this ignores the fact it took that long to hear the evidence. If submissions had been heard orally additional time would have been needed and I consider Mr Knowsley's estimate of a little less than a half day reasonable.

[7] I therefore conclude \$5,000, being a bit less than a day and a half at the normal tariff, to be appropriate.

Conclusion and orders

[8] For the above reasons I order the respondent, Angsla Holdings Limited, pay the applicant, Michael Cull, \$5,000 (five thousand dollars) as a contribution toward the costs he incurred in pursuing his claims.

Michael Loftus
Member of the Employment Relations Authority