

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2024] NZERA 428
3195359

BETWEEN MORGAN CAMPBELL
 Applicant

AND T JULIAN CONTRACTING
 LIMITED
 Respondent

Member of Authority: Alex Leulu

Representatives: Dave Cain, advocate for the Applicant
 No appearance by the Respondent

Submissions and further 18 June 2024 from the Applicant
information received: 19 and 21 June 2024 from the Respondent

Determination: 15 July 2024

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 24 May 2024 the Authority upheld Morgan Campbell’s claims against T Julian Contracting Limited (TJCL) for unjustified dismissal.¹ As part of its determination, the Authority reserved its decision on costs. A timetable was also set for memoranda to be filed if the parties were unable to resolve the issue of costs themselves. On 18 June 2024 Mr Campbell filed and served a memorandum asking the Authority to make a further determination for an award of costs against TJCL.

Costs principles

[2] Clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) gives the Authority discretion to order any party to a matter to pay to another party such costs and expenses as the Authority thinks reasonable. The unsuccessful party will usually

¹ *Campbell v T Julian Contracting Limited* [2024] NZERA 308.

have to contribute to the costs of the successful party, as well as meeting their own costs. A daily tariff applied by the Authority sets a starting point from which relevant factors and principles may guide an upward or downward adjustment of the amount of costs awarded.² The current tariff for costs is \$4,500 for the first day of any matter and \$3,500 for any proceeding days.

[3] Relevant principles governing costs in the Authority include consideration of whether the conduct of the parties increased costs unnecessarily, warranting an adjustment up or down, without compromising the Authority's otherwise modest approach to costs.³ Costs should not be used to punish a party or express disapproval of an unsuccessful party's conduct.

Should costs be awarded?

[4] Mr Campbell sought an order of a contribution of costs against TJCL for a total of \$10,000 and reimbursement of the Authority's filing fee. Mr Campbell said the starting point for assessing costs should take into account events after the investigation meeting (which TJCL did not attend). After the investigation meeting, TJCL instructed a law firm which Mr Campbell said, led to the matter being continued on the papers with an exchange of additional affidavits and submissions.

[5] Considering the Authority's notional daily tariff, Mr Campbell claimed the approximate equivalent of two full total days. This led to a proposed starting point for his claim to a contribution of his costs of \$8,000.

[6] Mr Campbell sought an uplift of this starting point amount for two reasons. Firstly, he referred to an earlier without prejudice offer (the settlement offer) he made to TJCL for payment to resolve the matter (before the matter was lodged at the Authority). This amount covered full and final settlement and costs. TJCL rejected the settlement offer. The amount was considerably less than what the Authority ordered against TJCL as part of its substantive determination.

[7] Secondly, Mr Campbell also said TJCL had engaged in poor conduct and lack of engagement during the Authority's investigation. He said this led to unnecessarily prolonging the matter and leading to increased costs to Mr Campbell.

² *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

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

[8] Taking these two points into account, Mr Campbell said an uplift should apply in this case. He submitted that a fair and reasonable award for costs against TJCL should be a total of \$10,000 plus disbursements.

[9] Although a representative for TJCL had initially contacted the Authority in respect of costs, no formal submission was received by or on behalf of TJCL.

Outcome

[10] Mr Campbell was the successful party and costs should follow the event. He is entitled to a contribution to his legal costs. For this matter, the notional daily tariff is the appropriate starting point. The investigation meeting took approximately half a day and so an initial starting point amount of \$2,500 should apply.

[11] I accept an uplift is appropriate in this case. An uplift of \$1,000 is appropriate and takes into account Mr Campbell's previous settlement offer and TJCL's conduct during the Authority's investigation. In terms of settlement offers, the Authority adopts a robust approach that is "consistent with the public interest in encouraging the acceptance of reasonable settlement offers and avoiding unnecessary litigation."⁴ I also accept to some degree Mr Campbell's submissions in respect of TJCL conduct during the Authority's investigation. Much of TJCL's approach to the Authority's investigation was referred to in the Authority's substantive determination.

[12] In applying the tariff for a less than one full day investigation meeting and taking into account an uplift from that amount, the appropriate order for an award is for TJCL to pay a contribution of costs to Mr Campbell of \$3,500. TJCL is also ordered to reimburse Mr Campbell the cost of the Authority filing fee of \$71.56. Both amounts are to be paid within 21 days of the date of this determination.

Alex Leulu
Member of the Employment Relations Authority

⁴ *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4.