

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 20  
5437517

BETWEEN                      ROBERT DUNCAN KENT  
                                         Applicant  
  
A N D                              BARKERS PARK LIMITED  
                                         First Respondent  
  
                                         SUNG HO PARK  
                                         Third Respondent

Member of Authority:      Rachel Larmer

Representatives:           Applicant in person  
                                     Brian Foote, Counsel for the First and Third  
                                     Respondents

Investigation Meeting:    On the papers

Submissions Received:    5 January 2015 from the Applicant  
                                     20 January 2015 from the Respondent  
                                     21 January 2015 from Applicant

Date of Determination:    28 January 2015

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Mr Kent was awarded three months' lost remuneration in the Authority's substantive determination involving these parties.<sup>1</sup> The parties were encouraged to quantify and agree on the amount of lost remuneration due to Mr Kent but that has not occurred. Mr Kent now applies for an order from the Authority fixing the amount of lost remuneration he has been awarded.

[2] Mr Kent claims lost remuneration of \$32,913.00. Mr Foote's submissions accept that amount is what Mr Kent would have received as three months' remuneration.

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<sup>1</sup> [2014] NZERA Auckland 517

[3] The Authority was unable to fix the amount of lost remuneration at the time it issued the substantive determination because the amount of Mr Kent's earnings in the three months' post his dismissal was not known at that time.

[4] Mr Kent has now disclosed that he received total income of \$9,092.28 in the three months following his dismissal so that amount needs to be deducted from the total lost remuneration payable.

[5] I do not accept Mr Kent's submissions that this amount should not be deducted from what he is awarded because Mr Kent had to expend his own money (prior to his dismissal) on an election campaign to get elected to the Rotorua District Council, which was where the bulk of his post dismissal income came from. I have already expressed my views about that claim in the substantive determination so I am not going to revisit that here.<sup>2</sup>

[6] The first respondent Barkers Park Limited (Barkers Park) is ordered to pay Mr Kent \$23,820.72 under s.128 (2) of the Employment Relations Act 2000 (the Act) to compensate him for the remuneration he lost as a result of his unjustified dismissal.

[7] Mr Kent has claimed 414 days interest on his lost remuneration at the prescribed rate of 5% which he has calculated as \$1,866.57. This amount has not been disputed by the respondents. Accordingly, I award Mr Kent \$1,866.57 interest on his outstanding lost remuneration which was awarded in the substantive determination dated 16 December 2014.

[8] I note that interest continues to run until Mr Kent has been paid in full. The interest awarded above is for 141 days only. The Authority was not provided with a daily interest rate so has accepted Mr Kent's calculations – it has not undertaken its own interest calculations.

[9] The first and third respondents seek costs against Mr Kent based on the notional daily tariff rate of \$3,500. Costs are discretionary. Taking an overall view of fairness and achieving justice between the parties I decline to award costs against Mr Kent who was the predominantly successful party.

[10] Justice is best served by costs lying where they fall. I consider that the manner in which the respondents conducted their case increased the time required for the

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<sup>2</sup> Supra

investigation meeting which in my view balances out any adjustment that could in theory potentially be made to reflect the fact that the respondents succeed in respect of some of Mr Kent's claims against them.

[11] Barkers Park is ordered to pay Mr Kent within 28 days of the date of this determination:

- (i) \$23,820.72 lost remuneration and
- (ii) \$1,866.57 interest on his lost remuneration;
- (iii) Interest at rate of 5% as per substantive determination until Mr Kent has been paid in full.

**Rachel Larmer**  
**Member of the Employment Relations Authority**