

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 151
3016572

BETWEEN

ANNA-MAREE LYNCH
Applicant

AND

MARLBOROUGH VINTNERS
2011 LIMITED
Respondent

Member of Authority: Christine Hickey

Representatives: Peter McRae, counsel for the applicant
Miriam Radich and Sarah Wadworth, counsel for the
respondent

Costs submissions received: From the applicant on 23 August 2018
From the respondent on 6 September 2018

Determination: 15 October 2018

COSTS DETERMINATION OF THE AUTHORITY

[1] On 27 July 2018, I issued a determination¹ finding Marlborough Vintners unjustifiably dismissed Ms Lynch and ordering it to pay her a total of \$37,326.96 gross.

[2] Submissions from Mr McRae claim that the respondent should pay costs of \$4,500, being one day's tariff, reimburse Ms Lynch \$1,876.74 for Mr McRae's air travel and pay \$1,000 for Mr McRae's costs submissions.

[3] Submissions for the respondent claim that instead Ms Lynch should be responsible for its solicitor-client costs from 7 February 2018 when it made a reasonable and proportionate proposal to settle her claim. The respondent says that Ms Lynch unreasonably declined the offer and has not bettered the offer in the

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Authority. The respondent says at a minimum, I must give its offer weight in my consideration of costs.

[4] If I decide the respondent should contribute to Ms Lynch's costs it says that it should not be liable for Mr McRae's travel costs and that I should not award a full day's tariff of \$4,500 because the investigation meeting lasted for less than a whole day.

The Calderbank offer

[5] After unsuccessful mediation in December 2017, the respondent instructed Radich Law. On 7 February 2018, the respondent made an offer to settle proceedings with Ms Lynch for lost wages of \$17,307.69 and \$15,000 compensation for hurt and humiliation. In addition, it offered \$5,000 for legal costs to date. The offer was open for acceptance until 12 February 2018. The value of the offer, excluding costs, was \$32,307.69.

[6] On 8 February 2018, I set the date for the investigation meeting as 13 April 2018.

[7] Ms Lynch declined to accept the respondent's offer to settle. Ms Lynch obtained \$37,326.96 in the Authority before any consideration of costs.

[8] I am satisfied that Ms Lynch obtained significantly more in the Authority than the respondent offered her to settle.

[9] Therefore, I am not satisfied that the Calderbank offer operates to reverse the usual situation of costs following the event.

What is a reasonable amount for the respondent to pay towards Ms Lynch's costs?

[10] The starting point is an analysis of whether the usual daily tariff of \$4,500 applies. The investigation meeting did not take a full day because I did not hear submissions. Instead, to suit the parties I timetabled the submissions for after the meeting.

[11] The respondent submits that it was prepared to deliver its submissions on the day and it should not be expected to pay Ms Lynch a full day's tariff, because Mr McRae was not prepared to do so.

[12] The Authority's daily tariff amount was set with the understanding that it covered the costs of preparation for, participation in the investigation meeting and making submissions. Therefore, the fact that the investigation meeting ended slightly earlier than it would have if I heard submissions in person does not reduce the tariff.

[13] The appropriate starting point for costs is the daily tariff of \$4,500.

Should the respondent pay for Mr McRae's travel?

[14] The applicant submits that the respondent unreasonably and extraordinarily delayed proceedings. Because of that delay, Mr McRae left New Zealand to live in Timor Leste before the investigation meeting. Therefore, the applicant seeks that the respondent pay Mr McRae's travel costs for returning to New Zealand to undertake the investigation meeting.

[15] Mr McRae and Ms Lynch must have known of Mr McRae's travel plans when agreeing to the Authority's suggested investigation meeting date.

[16] The respondent denies any unreasonable delay on its part. I do not consider there is sufficient evidence to find that the respondent deliberately delayed the progress of proceedings, despite it taking a considerable time to find a date that suited Mr Moore and the Mediation Service for mediation in Blenheim.

[17] The Authority does not generally award recompense for counsel's travel costs if it is reasonable to expect the successful party to have engaged local counsel.

[18] Ms Lynch could have engaged local counsel to represent her when it became clear Mr McRae was moving overseas. Instead, she chose to retain him despite knowing that she would incur liability to pay his travel costs. The respondent is not responsible for this aspect of Ms Lynch's costs.

Costs for pursuing costs

[19] Ms Lynch submits that the respondent should pay \$1,000 for Mr McRae having to prepare submissions on costs. However, the Authority does not generally award costs on costs as it considers the daily tariff covers it. I dismiss this part of the claim.

Conclusion

[20] Having considered all relevant matters, including the Calderbank offer, I consider it is reasonable that the respondent pay Ms Lynch \$4,500 towards her legal costs.

Christine Hickey
Member of the Employment Relations Authority