

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2016] NZERA Christchurch 119  
5573926

BETWEEN MADDISON NOLET  
Applicant

A N D EDGEWATER RESORT HOTEL  
LIMITED  
Respondent

Member of Authority: Helen Doyle

Representatives: Michael Guest, Advocate for Applicant  
Don Rhodes, Advocate for Respondent

Submissions Received: 10 July 2016, from the Applicant  
27 June 2016, from the Respondent

Date of Determination: 20 July 2016

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A I order Maddison Nolet to pay to Edgewater Resort Hotel Limited the sum of \$3,500 being costs.**

**The substantive determination**

[1] In my determination dated 15 June 2016<sup>1</sup>, I found that the applicant's grievance of unjustified dismissal, actual or constructive was not made out. I reserved the issue of costs and set a timetable for submissions if agreement could not be reached.

[2] Submissions have now been received from both parties.

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<sup>1</sup> [2016] NZERA Christchurch 87

### **The respondent's submissions**

[3] Mr Rhodes, on behalf of the respondent, refers to the well-established principle that costs generally follow the event. He submits that there is no reason for that principle not to apply in this matter.

[4] Mr Rhodes submits that the actual costs for the respondent are \$4,925.00 exclusive of GST but there are additional circumstances he submits should be taken into account in increasing the usual daily tariff of \$3,500.00 to \$3,950.00. That increased sum is what the respondent claim as its contribution towards costs

[5] He submits that although there were claims of actual and constructive unjustified dismissal, only the actual dismissal date was specified shortly before the hearing and the date of constructive dismissal was never specified. Further, Mr Rhodes submits that there was an attempt to resolve this matter by the intervention of another Authority Member in informal settlement discussions prior to the investigation meeting which was not successful.

[6] Mr Rhodes submits that the applicant's claims were based on generalities and the actions relied on in support of the constructive dismissal claim were not specified. The respondent seeks a \$450.00 increase to the daily tariff under the circumstances as the extra time taken was three hours.

[7] The respondent acknowledges the personal situation of the applicant but submits that she has received encouragement and support throughout the process and would not be alone in relation to any costs award. The respondent, Mr Rhodes submits, wants it recorded that it is aware that any claim for costs must not be for the purpose of punishing an unsuccessful party.

### **The applicant's submissions**

[8] Mr Guest provided his submission on costs on behalf of the applicant whilst overseas. He submitted that the Authority should exercise its discretion to find that costs should lie where they fall.

[9] He submits that the applicant has ongoing health issues and part time contract work and has been forced to return to live with her parents. She has limited income

per week and no equity in any asset and is still responsible for a student loan and a credit card liability.

[10] Mr Guest submits that the applicant's attempts to have the matter mediated at the first opportunity were timely and that her statements of evidence had been lodged by the time the first telephone conference with the Authority took place.

[11] Mr Guest submits that agreement from the respondent to mediation was not timely and dates offered for mediation were rejected. Further, Mr Guest submits that the respondent did not provide anything in writing about issues until the time for lodging statements of evidence and there was no engagement at an early stage.

### **Determination**

[12] It is uncertain so I can only speculate, whether a written response at an earlier time to Mr Guest would have prevented the respondent incurring the costs it claims for preparation for and attendance at the investigation meeting. A face to face meeting was proposed at that early stage by the respondent and eventually there was mediation.

[13] Once the briefs of evidence were lodged the Authority suggested that another Authority Member may be of assistance to the parties in an attempt to resolve the matter without the need for an investigation meeting. That offer was taken up by both parties who attended by telephone with another Member for that purpose. The matter was not resolved.

[14] I am not satisfied that this is a matter where the respondent who was successful should be deprived of a contribution towards its costs which are reasonable in all the circumstances. The investigation meeting took a full day and the case the respondent was facing was not altogether clear.

[15] The appropriate starting point is the usual daily tariff of \$3500.00, I have then considered in exercising my discretion whether it would be appropriate to increase that for the additional costs Mr Rhodes submits the respondent incurred or decrease the award on the basis of the applicant's limited financial means.

[16] I would have awarded the respondent costs in the sum of \$3950.00 but I find it would be fair to moderate the award I would have given to the respondent because of

the applicant's financial situation. I do not however find it would be appropriate or fair in this case to reduce an award below the daily tariff of \$3,500.00.

[17] I am sure that the respondent would be agreeable to a repayment plan that takes into account the applicant's financial position. The respondent held the applicant in high regard and the General Manager said at the conclusion of the investigation meeting he would welcome the applicant to return back to work should there be a suitable position available.

[18] I order Maddison Nolet to pay to Edgewater Resort Hotel Limited the sum of \$3,500.00 being costs.

Helen Doyle  
Member of the Employment Relations Authority