

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 16
5552507

BETWEEN GLENDA PORTER
 Applicant

A N D COMPLETE SITEWORKS
 COMPANY LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Steve Richardson, Advocate for the Applicant
 Pera Te Amo, representative for the Respondent

Submissions Received: 21 December 2015 for the Applicant
 No submissions received for the Respondent

Date of Determination: 22 February 2016

**COSTS DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

A I order Complete Siteworks Company Limited to pay to Glenda Porter the sum of \$2900 being costs and \$71.56 being reimbursement of the filing fee.

[1] In my determination dated 17 December 2015 I found that the applicant was an employee of the respondent. I found that she was unjustifiably dismissed from her employment and awarded compensation in the sum of \$6,000, reimbursement for lost wages in the sum of \$2,880, and various other sums in relation to wages, payment for public holidays, alternative days, reimbursement for purchases and holiday pay.

[2] I reserved costs and set a timetable for an exchange of submissions.

[3] Submissions have now been received on behalf of the applicant from Mr Richardson, but no submissions have been received by the respondent by the date set in the determination, 4 February 2016.

[4] I intend to proceed to determine the issue of costs.

Submissions of the applicant

[5] Mr Richardson submits that actual costs of \$4,400 were incurred by the applicant. A copy of the invoice sent to the applicant was attached to the submissions.

[6] Mr Richardson acknowledges in his submissions that costs are usually awarded on a daily tariff basis and that the investigation meeting took less than half a day. He submits, however, that a factor to be taken into account by the Authority is a *without prejudice save as to costs* letter in the nature of a Calderbank offer dated 18 August 2015. The offer was to settle the matter for the sum of \$7,000.

[7] Mr Richardson says that the *Calderbank* offer was sent by both email and post to the respondent, but there was no acknowledgement or response to it from the respondent. He attached evidence of delivery of the letter. He seeks on behalf of the applicant reimbursement of actual costs and the filing fee of \$71.56.

Determination

[8] The full Court of the Employment Court in *Fagotti v Acme & Co Limited*¹ agreed that there is significant value in a commonly applied and well publicised notional daily rate for costs in the Authority. It was stated in *Fagotti* at [114] that the Authority in that matter did not bind itself inflexibly to a daily tariff approach and exercised its broad statutory discretion appropriately.

[9] The daily tariff in the Authority for a full day investigation meeting is currently recognised at \$3500. A full day in the Authority is usually assessed on the basis of a six hour day.

[10] The investigation meeting in this matter took about two and a half hours which is a little under half a day. On the basis of the daily tariff that is the sum of \$1400 and is the appropriate starting point for an assessment of costs.

¹ [2015] NZEmpC135 at [108]

[11] I have considered the settlement offer which was for payment of \$7000. That was less than was ultimately awarded to the applicant. The offer was clear in the letter and it included all matters including costs. The time for its acceptance was comparatively brief being until 5pm on 24 August 2015. The respondent did not respond at all to the offer and I do not find that the period for consideration was so limited so as to give the offer no weight. It was an offer made well before the date for investigation in late November 2015, before the parties had incurred costs for preparation and the decline of that offer by the respondent could not be said to be reasonable.

[12] I find that there should be uplift to the daily tariff but not to the extent of full indemnity. After the offer was made the invoice sent to the applicant reflects 11.75 hours of further work was required including attendance at the investigation meeting which costs would not have been incurred if the offer had been accepted.

[13] At Mr Richardson's reasonable charge out rate of \$200.00 per hour further costs of \$2350 were incurred after the settlement offer was made. I shall increase the starting point for costs in this case of \$1400 by a further \$1500 to reflect a contribution toward that.

[14] Reimbursement of the filing fee of \$71.56 is also sought.

[15] I order Complete Siteworks Company Limited to pay to Glenda Porter costs in the sum of \$2900 and reimbursement of the filing fee in the sum of \$71.56.

Helen Doyle
Member of the Employment Relations Authority