

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 246
3073453

BETWEEN MORTEZA SHARIFI
Applicant
AND CAREER MATRIX NZ
LIMITED
Respondent

Member of Authority: Rachel Larmer
Representatives: David Fleming, counsel for the Applicant
Phil Ahern, counsel for the Respondent
Investigation Meeting: On the papers
Submissions and Further Information Received: 5 June 2020 from the Applicant
19 June 2020 from the Respondent
Date of Determination: 25 June 2020

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Sharifi's unjustified dismissal personal grievance succeeded, see the Authority's substantive determination dated 22 May 2020.¹

[2] The parties were encouraged to resolve costs by agreement but that has not been possible. Mr Sharifi has sought an award of \$7,500 costs plus a disbursement of \$71.56 to reimburse his filing fee.

¹ *Sharifi v Career Matrix NZ Limited* [2020] NZERA 208.

[3] The Authority has adopted its usual tariff based approach to assessing costs in this matter. Mr Sharifi's claim involved a one day investigation meeting so the notional starting point for assessing costs in this matter is \$4,500.

[4] Mr Sharifi sought an uplift of \$3,000 to the notional daily tariff on the grounds that:

- (a) Mr Sharifi was not registered for GST, so Mr Sharifi was unable to recoup the GST component of his legal costs;
- (b) An early Calderbank offer which was rejected by Career Matrix NZ Limited (Career Matrix) that was significantly lower than the remedies Mr Sharifi received from the Authority; and
- (c) The way in which Career Matrix conducted the Authority proceedings unnecessarily increased his legal costs.

[5] Career Matrix disputed that any of the factors identified by Mr Sharifi were valid grounds for uplifting the notional daily tariff in this case. Career Matrix said the one day tariff should apply so that it would not be required to pay more than \$4,500 costs.

[6] Career Matrix said that the issue of whether Mr Sharifi was GST registered should be irrelevant, its failure to accept the Calderbank offer was not unreasonable, and that it did conduct itself reasonably and appropriately.

[7] It is appropriate to uplift the notional starting tariff in this matter.

[8] On 8 August 2019 Mr Sharifi made a "*without prejudice save as to costs*" settlement offer to Career Matrix consisting of \$8,000 distress compensation, \$5,845 gross lost remuneration, and a contribution towards his legal costs of \$1,250 plus GST. The Authority awarded Mr Sharifi \$18,000 distress compensation and \$10,973, approximately \$14,000 more than he had offered to settle for.

[9] This offer remained open until 15 August 2019, so Career Matrix had a reasonable time to consider it. Mr Sharifi warned Career Matrix that if his offer was not accepted then he would be seeking higher remedies from the Authority than those specified in the offer and he would be seeking an uplift to the costs contribution he would otherwise have been entitled to.

[10] The settlement offer also recorded Mr Sharifi's view that his dismissal was unjustifiable because there was not a proper consultation proposal or process followed before his position

was disestablished and he was made to apply for what was essentially his position, and the selection process that followed was unfair and lacked transparency. Mr Sharifi succeeded on these claims in terms of the substantive findings made by the Authority.

[11] Career Matrix's rejection of this offer was unreasonable. If Mr Sharifi's reasonable settlement offer had been accepted at the early stage during which it had been made then both parties would have avoided incurring the legal costs that they did.

[12] Mr Sharifi's actual legal costs were \$11,500 inclusive of GST, so the amount he is claiming from the Authority represents a reduction from the actual costs he had incurred.

[13] At the time Mr Sharifi made his *Calderbank* offer he had only incurred total legal costs of less than \$700. He had anticipated that if his settlement offer was accepted, then his additional legal costs would not have exceeded \$1,500. The increase in Mr Sharifi's actual costs subsequent to Career Matrix declining his reasonable settlement offer was therefore in excess of \$10,000, excluding the filing fee.

[14] Mr Sharifi's cost submissions identified the various ways in which Career Matrix's conduct of these proceedings had unnecessarily increased his legal costs. This included issues with the filing of the bundle of documents, witness statements being filed late, documents being produced at a late stage, one witness statement being filed only two days before the investigation meeting and its submissions being filed late.

[15] Mr Sharifi claimed that these actions resulted in his counsel having to correspond about Career Matrix's missed deadlines and having to readjust workloads and rearrange other matters when tasks on his behalf could not be commenced as planned due to the late filing of documents by Career Matrix. Previously finalised documents had to be updated to accommodate revisions made by Career Matrix to the evidence bundle and to react on an urgent basis to the late filing of additional key evidence by Career Matrix.

[16] The Authority considered that both of these factors (unreasonable rejection of the *Calderbank* offer), and the manner in which the proceedings were conducted), warranted an uplift of \$2,500 being made to the notional starting tariff.

[17] Career Matrix is ordered to pay Mr Sharifi \$7,000 costs and to reimburse him \$71.56 for his filing fee.

[18] The Authority's substantive determination has been challenged by Career Matrix. The payment of the costs awarded to Mr Sharifi in this determination is therefore placed on hold, until 14 days after the Employment Court challenge has been resolved, in whatever way that may occur.

Rachel Larmer
Member of the Employment Relations Authority