

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 406
3182779

BETWEEN PHILIP TIGHE-UMBERS
Applicant

AND JETCONNECT LIMITED
Respondent

Member of Authority: Andrew Gane

Representatives: Richard McCabe, counsel for the Applicant
Michael O'Brien, counsel for the Respondents

Investigation Meeting: On the papers

Submissions received: 20 May 2024 from the Applicant
20 May 2024 from the Respondent

Date of Determination: 8 July 2024

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In my determination dated 22 April 2024, I held that Mr Tighe-Umbers was given the three months' notice of termination of employment pursuant to his collective employment agreement and did not have a personal grievance of unjustified dismissal against Jetconnect Limited (Jetconnect).¹

[2] In my determination I also reserved costs and encouraged the parties to resolve any issues of costs between themselves.

[3] The parties have been unable to resolve costs.

¹ *Tighe-Umbers v Jetconnect Limited* [2024] NZERA 234.

[4] Jetconnect seeks an order for costs \$4,500 against Mr Tighe-Umbers.

[5] Mr Tighe-Umbers opposes the amount of costs Jetconnect is claiming and submits costs should lie where they fall.

The Authority's Investigation

[6] This cost application was determined on the papers without holding an investigation meeting.²

The Parties' Submissions

Jetconnect's submissions

[7] Jetconnect's counsel submits Mr Tighe-Umbers' claim was for an unjustified dismissal, with associated remedies. Jetconnect had to defend the unjustified dismissal claim, including addressing the applicant's claim for permanent reinstatement. Jetconnect successfully defended that claim and the Authority found that the applicant had no personal grievance for unjustified dismissal.

[8] Jetconnect submits the investigation meeting was for one day and the daily tariff should apply.

Mr Tighe-Umbers' submissions

[9] Mr Tighe-Umbers' counsel submits that costs should lie where they fall on the grounds;

- (a) The Authority's determination focused solely upon the interpretation of the collective agreement's notice clause and therefore falls under the categories of matters that are not subject to a daily tariff and the parties should bear their own costs.³
- (b) Mr Tighe-Umbers' claim achieves the threshold of a "test case" where there was no substantive decision from the Court addressing the material issue(s).⁴

² Employment Relations Act 2000, s175D.

³ Andrew Dallas, "Practice Direction Employment Relations Authority — Te Ratonga Ahumana Taimaihi" (1 February 2024), section 5.

⁴ *Pact Group v Sheridan* [2023] NZEmpC 235.

- (c) Jetconnect has failed to provide a breakdown of how and when the costs were incurred and provide supporting evidence as directed by the Authority at paragraph [43] of the substantive decision.
- (d) Mr Tighe-Umbers has challenged the determination (prior to the Jetconnect's Memorandum of Costs being lodged).

Analysis

Costs in the Authority

[10] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Employment Relations Act 2000. The principles and the approach adopted by the Authority in which an award of costs is made are settled.

Costs follow the event

[11] The usual principle for costs is that a successful party is entitled to a contribution towards their representation costs.

Application of the daily tariff

[12] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500.00 for the first day of hearing, and \$3,500.00 for subsequent hearing days.⁵

[13] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[14] I agree with Jetconnect's counsel that although the unjustified dismissal claim required consideration of the collective agreement, it was a broader claim than that. Jetconnect had to address the issues arising out of the unjustified dismissal claim and associated remedies.

[15] Further, although Mr Tighe-Umbers has challenged the determination, this in itself is not a stay on proceedings.

⁵ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1 .

[16] In the circumstances of this case, I find no good reason to depart from using the daily tariff for one day.

Adjusting the daily tariff

[17] Jetconnect is not seeking any uplift of the specified tariff, seeking the usual daily rate for the first day of an Investigation Meeting, this being \$4,500.

[18] I accept that an adjustment to the daily tariff is not required in this case.

Conclusion

[19] Jetconnect was the successful party and is entitled to an award of costs of \$4,500.00.

Orders

[20] Mr Tighe-Umbers is to pay Jetconnect \$4,500 as a contribution to Jetconnect's costs in this matter. This is to be paid within 14 days of this determination.

Andrew Gane
Member of the Employment Relations Authority