

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 613
3257059

BETWEEN EURICO TOMAS
 Applicant

AND MATTHEW SANDERS
 Respondent

Member of Authority: Peter Fuiava

Representatives: Adrian Plunket, advocate for the Applicant
 Respondent in person

Submissions received: 26 September 2024 from the Applicant
 No submissions from the Respondent

Determination: 11 October 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination dated 6 September 2024,¹ I granted Eurico Tomas' wage arrears and unpaid annual leave claims against Matthew Sanders under ss 142Y and 142W of the Employment Relations Act 2000 (the Act). The question of costs was reserved and a timetable for the filing of memoranda was put in place if the parties were not able to reach their own agreement regarding costs. This determination resolves the issue of costs.

How has the Authority proceeded?

[2] Mr Tomas' costs submissions were lodged with the Authority and served on Mr Sanders by email on 26 September 2024. From the date of service of that memorandum, Mr Sanders had 14 days to lodge a reply or until 10 October 2024.

[3] On 4 October 2024, the Authority Officer emailed the parties reminding Mr Sanders that his costs submissions were due by close of business Thursday

¹ *Eurico Tomas v Matthew Sanders* [2024] NZERA 538.

10 October 2024 following which the Authority would determine the issue of costs based on all the information before it.

[4] As of the date of this costs determination, no reply submissions have been received from Mr Sanders. Consequently, in order to bring finality to this employment problem, it is necessary to determine costs having regard to what I have before me.

What is the successful parties' position regarding costs?

[5] What Mr Plunket seeks by way of costs is not unreasonable. He observes that the investigation meeting took half a day and seeks costs for an investigation meeting of that duration pursuant to the Authority's notional daily tariff of \$4,500 for the first day of an investigation meeting. Half of that amount is \$2,250 which Mr Tomas is seeking.

[6] Mr Plunket also seeks reimbursement of the filing fee of \$71.55. However, as this has already been awarded for in the substantive determination, reimbursement of the filing fee cannot be given twice and is declined.

[7] Finally, Mr Plunket seeks an uplift in costs of \$1,125 in light of a written Calderbank offer dated 19 March 2024 that was made to Mr Sanders well before the investigation meeting on 15 July 2024. That offer was open for a period of six days, expiring at 5 pm on 25 March 2024.

What is the Authority's approach to costs?

[8] The Authority has the power under sch 2 cl 15 of the Employment Relations Act 2000 (the Act) to award costs. However, the discretion to order a party to pay costs to another party must be exercised in accordance with principle. Those principles are well settled and are outlined in its practice note which is publicly available.² Further information is also available in its Practice Direction.³

² www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

³ www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf.

[9] Informing the Authority's approach on costs is relevant caselaw such as *PBO v Da Cruz* in which the Employment Court observed that, since its inception, the Authority has held to some basic tenets concerning costs which relevantly include:⁴

- Costs generally follow the event (i.e. the unsuccessful party will normally be required to contribute to the costs of the successful party).
- Calderbank offers may be taken into account when setting costs.
- That awards will be modest.

How much costs should be awarded against Mr Sanders?

[10] The investigation meeting lasted half a day and I see no reason to depart from the usual maxim that costs follow the event namely that Mr Sanders, as the unsuccessful party, ought to contribute to Mr Tomas' costs. Mr Plunket did not provide the Authority with a copy of his invoices for services to Mr Tomas but as the tariff only has been sought, I have not requested that these be provided on this occasion.

[11] However, the way in which Mr Tomas conducted his case has unnecessarily increased his own costs for example he sought compensation for hurt and humiliation against Mr Sanders when this is not available under s 142Y of the Act. Further, he sought to join several third-party companies to this employment problem when he had no employment relationship with any of them.⁵

[12] Be that as it may, Mr Tomas is entitled to an uplift of costs for his written Calderbank offer. A Calderbank offer is an offer to settle a matter which contains a statement which makes clear that an unreasonable refusal to accept it could result in an application by the offeror for an uplift in a subsequent award of costs at the end of the substantive matter if the offeree either loses or, in the case of an applicant, wins but fails to be awarded remedies that exceed the amount being offered.

[13] Mr Tomas' Calderbank letter to Mr Sanders gave him sufficient time to think about the offer and to decide what to do about it. Had he accepted the offer, he would have been better off by at least \$3,610.50 plus interest. However, having rejected a validly made Calderbank offer, Mr Tomas is entitled to an uplift of costs which I set at \$1,000.

⁴ n 2 at [44].

⁵ Second Minute of the Authority, 1 May 2024, at [2].

Outcome and order

[14] For the reasons given above, the Authority orders **Matthew Sanders to pay Eurico Tomas \$3,250 as a contribution towards his actual and reasonable costs no later than Friday 8 November 2024.**

Peter Fuiava
Member of the Employment Relations Authority