

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 688
3226279

BETWEEN ELISABETTA TURCONI
Applicant

AND JITBUG LIMITED
Respondent

Member of Authority: Andrew Gane

Representatives: Hilary Ord, advocate for the Applicant
Caleb Phang for the Respondent

Submissions received: 22 October 2024 from the Applicant

Date: 19 November 2024

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] By determination issued on 18 October 2024 Jitbug Limited (Jitbug) was ordered to pay remedies, wage arrears, holiday pay and a penalty for unjustifiably dismissing Elisabetta Turconi.¹

[2] Costs were reserved and the parties encouraged to resolve any issues of costs between themselves. They were unable to resolve costs.

[3] Ms Turconi seeks an order for costs of \$5,000 and disbursements of \$71.55 for the lodging fee against Jitbug.

¹ *Turconi v Jitbug limited* [2024] NZERA 630

[4] Jitbug opposes the amount of costs Ms Turconi is claiming.

The Parties' Submissions

Ms Turconi's submissions

[5] Ms Turconi's counsel submits that an appropriate costs award against Jitbug in the circumstances is \$5,000 (the daily tariff of \$4,500 and an uplift to account for a settlement offer made but not accepted, as:

- (a) the matter involved an in-person full day hearing;
- (b) Ms Turconi was successful in her application;
- (c) the starting point is that costs should follow the event;
- (d) settlement offers were made in July 2023;
- (e) Ms Turconi's actual costs exceeded both the proposed costs award and the full daily tariff.

Jitbug's view

[6] Jitbug did not provide any written submissions in response to Ms Turconi's application for costs, however during the earlier investigation meeting Jitbug's representative had opposed any order to pay costs to Ms Turconi and stated that Ms Turconi should bear her own legal costs.

Analysis

Costs in the Authority

[7] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Employment Relations Act 2000. Principles applying to the exercise of that discretion, including that settlement offers may be taken into account and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.²

² *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

Costs follow the event

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

[9] When a party has incurred costs for representation by a lawyer or other advocate, the Authority may order whichever party is unsuccessful to contribute to any reasonably incurred costs of the other party.

Application of the daily tariff

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

[11] There is no reason to depart from this normal approach so I will calculate the award of costs based on the daily tariff.

[12] The investigation meeting for this matter took one day so the starting point for any costs award is \$4,500.

Adjusting the daily tariff

[13] The daily tariff can be adjusted for relevant factors, including any settlement offers.

Settlement offers

[14] I have seen the settlement offers Ms Turconi made to Jitbug and I am satisfied they were reasonable offers made well in advance of the investigation meeting. Acceptance of the settlement offers would have put Jitbug in a better position than it is now as it would have avoided the ongoing costs for both parties by ending Ms Turconi's claims at that time.

[15] A modest uplift of \$500 to the tariff is appropriate to recognise the unexplained rejection of a reasonable settlement offer.

³ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1 .

Orders

[16] Jitbug Limited must pay Elisabetta Turconi \$5,000 as a contribution to her costs in this matter and reimburse her for the fee of \$71.55 paid to lodge her application in the Authority.

[17] The costs must be paid by no later than 28 days of this determination.

Andrew Gane
Member of the Employment Relations Authority