

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2021] NZERA 547  
3115517

BETWEEN

WALTER VELAZQUEZ  
Applicant

AND

HUGH LEON MARTIN and CRAIG  
LEON MARTIN  
Respondents

Member of Authority: Philip Cheyne

Representatives: Ashleigh Fechny, advocate for the Applicant  
Hugh Leon Martin, the respondent  
No appearance by Craig Leon Martin

Submissions Received: 8 October 2021 from the Applicant

Date of Determination: 7 December 2021

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. Hugh Leon Martin and Craig Leon Martin are to pay Walter Velazquez  
\$5,071.56 by 4 January 2022.**

**Employment relationship problem**

[1] In a determination dated 27 September 2021, I found that Hugh Martin and Craig Martin were Mr Velazquez's employer and had unjustifiably dismissed him. Hugh Martin and Craig Martin were ordered to pay compensation to Mr Velazquez. I also found that they had breached the Employment Relations Act 2000 and the Holidays Act 2003. Penalties were ordered. I reserved costs.

[2] I have received submissions from Mr Velazquez's advocate. Nothing has been provided by either Hugh Martin or Craig Martin. This determination resolves the question of costs.

[3] The initial investigation meeting had to be adjourned to arrange for an interpreter for Mr Velazquez. My assessment on the day was that Mr Velazquez needed to be assisted by an interpreter. However, there was no criticism that an interpreter had not been requested beforehand. I agree with Ms Fechney's submission that the adjournment is not a ground to reduce the award of costs otherwise applicable. I acknowledge that the adjournment would have been inconvenient for Hugh Martin, who did appear. But there is no reason to think that it caused any legal costs to the respondents that should now be brought to account.

[4] When the investigation meeting resumed it took almost half a day. Hugh Martin produced some documents and calculations then, but was directed to produce the complete time and wage records after the meeting. There was a direction for written submissions canvassing that material and the issues for determination, in accordance with a timetable. Ms Fechney provided comprehensive written submissions covering all disputed matters. I find that for costs purposes, the matter can be treated as taking a one day investigation meeting. That covers the work that had to be done after the meeting preparing submissions on the material produced, together with the (almost) half day investigation meeting.

[5] Mr Velazquez was entirely successful in the matter. The respondents did not provide any submissions regarding costs. I see no reason to reduce the daily tariff rate from that applicable for the first day - \$4,500.00.

[6] There is a submission that the respondents' conduct during the Authority's investigation merits an uplift of \$1,000.00. The respondents did not lodge a reply to the statement of problem, did not actively participate in the investigation, did not participate in mediation, did not lodge statements of evidence and did not comply with the first direction made on 31 March 2021 to produce time and wage records prior to the resumption. Mr Velazquez was deprived of an opportunity to present a *Calderbank* offer or to narrow issues for investigation and determination.

[7] I agree that the respondents' non-compliance with the 31 March 2021 direction to produce all time and wage records by 12 April 2021 caused additional costs by extra time

expended by Ms Fechney in properly preparing for the continued investigation meeting. It is appropriate to recognise this by a modest uplift of \$500.00. I do not agree that the other matters would have caused additional costs, beyond the time necessarily required for a one-day investigation meeting. Those other matters do not warrant an uplift.

[8] There will be an order for \$5,000.00 in costs, plus an additional \$71.56 to cover the lodgement fee.

Philip Cheyne  
Member of the Employment Relations Authority