

taking one full day and preparation was lengthy due to Kiwi Hotel's failure to provide time and wage records correctly identifying the nature of payments made to him.

[3] The Authority may order any party to pay such costs and expenses as the Authority thinks reasonable.¹ The applicable principles when considering an application for costs are:²

- There is a discretion as to whether costs would be awarded and what amount;
- Discretion is to be exercised in accordance with the principle and not arbitrarily;
- Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;

[4] The evidence supporting the wage arrears claims were documented in Kiwi Hotel's wage and time records. Kiwi Hotel took no issue with the wage arrears claims and did not file submissions on this point. The wage arrears claims ought to have settled without the necessity of hearing. Mr Van As was required to take the matter to hearing as a consequence. He was successful and the Authority exercises its discretion to award costs.

[5] Mr Van As was partially successful in respect of the wage arrears claim. The personal grievance claim was dismissed. The personal grievance claim took up the majority of the hearing time and determination. It is appropriate to assess a costs

¹ Clause 15, Schedule 2 Employment Relations Act 2000

² *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] ERNZ 808 (Emp C) at [35]

award in proportion with the amount of time applicable to the wage arrears claim only.

[6] The failure to initially attend mediation was rectified when Kiwi Hotel attended on a subsequent date. The failure to resolve matters at mediation can only be the subject of speculation as the matters discussed are confidential. This conduct cannot be relevant to an increased costs award.

[7] Given the personal grievance occupied the majority of the hearing time, and was ultimately unsuccessful, any award of costs should not take into account preparation for that matters. Accordingly, an award of costs of half the daily notional tariff of \$1,750 plus disbursements of \$112.56 is appropriate in these circumstances.

[8] Accordingly, the Authority orders Kiwi Hotel to pay Mr Van As the sum of \$1,862.56 towards his costs.

T G Tetitaha
Member of the Employment Relations Authority