

[2] The parties were encouraged to agree on costs but that has not occurred so the Applicant seeks an award of costs of \$17,500 plus disbursements of \$408.56.

[3] The First and Second Respondents accept that the Applicant is entitled to a contribution towards her costs but says it should be less than what is sought. I note that an alternative figure was not given.

[4] The First and Second Respondents accept that the Applicant should be reimbursed for the disbursements sought, which mainly relate to witness expenses for witnesses summonsed to the investigation meetings.

The law

[5] The legal principles that apply to costs in the Authority are so well established that I do not need to set them out – see *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*².

[6] Suffice to say that I adopt the Authority's usual notional daily tariff based approach to costs. This matter involved five full investigation days.³ However the number of days of investigation meeting time needs to be apportioned between both parties, which are separate legal entities.

[7] The investigation meeting held on 10 August 2015 involved the First Respondent only. The Second Respondent was later joined as a party as a result of information and evidence that came out during the course of that investigation.

[8] I therefore assess costs based on 3 days of investigation meeting time for the First Respondent and 2 days of investigation meeting time for the Second Respondent.

[9] The current notional daily tariff is \$3,500. The notional starting point for assessing costs for the First Respondent is \$10,500 and for the Second Respondent is \$7,000.

[10] I must now consider, on a principled basis, whether the notional starting tariff needs to be adjusted to reflect the particular circumstances of this case.

² [2005] 1 ERNZ 808.

³ 10 August 2015 and 15-17 and 21 March 2016.

Are there any factors which would warrant an increase in the notional daily tariff?

[11] Neither party identified any factors which they say should result in the notional starting tariff being increased. I therefore do not increase the notional starting tariff.

Are there any factors which would warrant a reduction in the notional daily tariff?

[12] The First and Second Respondent say that the notional starting tariff should be decreased because two witnesses they had identified as relevant changed their evidence during the investigation meeting from the evidence that had previously submitted.

[13] I do not accept that as a basis for decreasing an award of costs to the Applicant. The evidence given by these two witnesses, whom were required to attend by the Respondent for cross examination, was held by the Authority to have supported the Applicant's version of events.

[14] I do not accept the First or Second Respondents' submission that the length of investigation meeting time required was extended through no fault of their own.

[15] Rather I consider the manner in which the Respondents elected to pursue the Applicant's claims unnecessarily prolonged the investigation meeting required. I do not increase the tariff to reflect that because the Applicant did not ask the Authority to do so and I cannot award more costs than have been sought by the Applicant.

[16] I find there are no good reasons to warrant a decrease to the notional starting tariff.

[17] I therefore apply the notional daily tariff to the assessment of costs in this matter.

What if any disbursements should be awarded?

[18] There is no dispute that the Applicant should be reimbursed \$408.56 for the actual disbursements incurred. I apportion this amount equally between the Respondents.

Outcome

[19] Within 28 days of the date of this determination:

- a. The First Respondent is ordered to pay the Applicant \$10,500 towards her actual costs plus \$204.28 towards her actual disbursements;
- b. The Second Respondent is ordered to pay the Applicant \$7,000 towards her actual costs plus \$204.26 towards her actual disbursements.

Rachel Larmer
Member of the Employment Relations Authority