

[3] Wellington City Transport Ltd trading as Go Wellington (Go Wellington) refers to a *Calderbank* offer it made. It suggests this is an appropriate case for costs to lie where they fall.

Determination

[4] Costs should follow the event and it is appropriate Mr Reid receive a costs award. When assessing the quantum of costs the starting point in the Authority usually begins with the application of a notional daily tariff, (the quantum of which is adjusted from time to time having regard to movements in the cost of legal and other advocacy services).²

[5] At the time Mr Reid's statement of problem was lodged with the Authority the daily tariff was set at \$4,500 per a first day of investigation. The Authority then consider whether there is any good reason to adjust the rate upwards or downwards.

Offers to settle

[6] Turning first to Go Wellington's submission that any costs award in Mr Reid's favour should be reduced on grounds that Mr Reid's rejected its *Calderbank* offer. The sum offered was the same as that awarded to Mr Reid in remedies.

[7] I am unwilling to find Mr Reid's rejection of the offer was unreasonable. While it is appropriate for the Authority to consider offers of settlement made between the parties when assessing costs,³ the primary purpose of a *Calderbank* offer is to have the parties resolve their dispute before litigation begins so as to avoid the costs (and risks) associated with it. In this instance, the offer was made after the Authority's investigation meeting concluded (albeit prior to the Authority's receipt of submissions) and costs had already been incurred. I find Go Wellington's *Calderbank* offer was ineffective in these circumstances and not a factor that impacts on my assessment.

² For example: see Practice Note 2 Costs in the Employment Relations Authority

³ *Fagotti v Acme & Co* [2015] NZEmpC 135 at [109]

The application of the Authority's daily tariff

[8] The investigation meeting took almost a full day. There is no dispute that Mr Reid's costs are well below that of the current daily tariff rate, and are reasonable.

[9] In the absence of conduct which would attract indemnity costs, a costs award is generally accepted as providing a contribution to a successful party's costs, as opposed to reimbursement of costs in full.

[10] There is little guidance as to how daily tariff should be applied where costs incurred are below that of current applicable rate.

[11] In a recent judgment, *Nathan v Broadspectrum (New Zealand) Limited (formerly Transfield Services (New Zealand) Limited)*,⁴ the Court could find no principled basis for reducing an applicant's award of costs solely on grounds the applicant had secured legal services charged at a more modest rate than available under the Court's Guidelines when setting costs. The Court awarded the applicant a sum equal to his actual costs.

[12] While the regime used to assess costs in the Court differs from that of the Authority, I consider the approach used in *Nathan*⁵ is equally appropriate to my assessment.

Order

[13] Pursuant to Schedule 2 of the Employment Relations Act I order Wellington City Transport Ltd trading as Go Wellington to pay Mr Reid the sum of \$2,800.

Michele Ryan
Member of the Employment Relations Authority

⁴ [2017] NZEmpC 118

⁵ Ibid