

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2019] NZERA 715
3038191

BETWEEN	MATTHEW COOPER Applicant
AND	SENATE INVESTMENT TRUST THROUGH CROWN LEASE TRUSTEES LIMITED Respondent

Member of Authority: Trish MacKinnon

Representatives: Robert Morgan, advocate for Applicant
No appearance for Respondent

Investigation Meeting: On the papers

Submissions Received: 22 November 2019 from the Applicant

Determination: 16 December 2019

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination of 29 October 2019 I found Matthew Cooper had been unjustifiably dismissed from his employment as a labourer. I found he had contributed to the situation that gave rise to his personal grievance to the extent that 25 per cent was deducted from the remedies that were awarded to him. I reserved the issue of costs.

[2] Mr Cooper now seeks a contribution to the costs he incurred in successfully prosecuting his claims in the Authority. Through his advocate, Mr Morgan, he submits that an application of a daily tariff-based approach would be appropriate.

[3] The investigation meeting occupied less than one day. Mr Morgan submits that the notional daily tariff used by the Authority, which stands at \$4,500 for the first day of an investigation meeting, should be awarded. He notes that a Calderbank offer had been made to the respondent on 28 June 2019, which was approximately one month before the Authority held its investigation meeting.

[4] Mr Morgan also submits that he had approached the respondent through its legal representative twice since my determination was issued with what he referred to as a “fair and reasonable settlement towards costs”. He says he received no reply to either approach and submits this justifies an increase to the usual costs award to that of a full day hearing.

[5] There has been no response from the respondent so its views are unknown.

Should costs be awarded?

[6] The principles relevant to costs awards for Authority investigations are well known. They are set out in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*¹. One of those principles is that costs generally follow the event, which normally results in a successful party being entitled to a contribution towards its costs from the unsuccessful party.

[7] Costs for each case are considered in the light of the particular circumstances and are frequently judged against a notional daily tariff, which is currently set at \$4,500 for the first day. Where a party’s conduct has increased costs unnecessarily, that is a factor that may be taken into account in the award.

[8] In this instance Mr Cooper was successful in his claims and it is appropriate that he receive the benefit of an award of costs. I see no reason to deviate from the Authority’s notional daily tariff as a starting point. The hearing took approximately three quarters of a day for which an award of \$3,375 would be appropriate.

[9] I am not persuaded that the respondent’s failure to respond to attempts to settle the issue of costs is a factor I should take into account in deciding whether an uplift to the tariff is appropriate. However, I do regard the Calderbank offer of 28 June 2019 as being relevant in this regard.

¹ [2005] 1 ERNZ 808

[10] As noted earlier, the offer was made one month prior to the Authority's investigation meeting and I consider it to have been made in a timely manner. There was no time limit placed on its acceptance and the respondent could have accepted it any time up to the investigation meeting saving legal fees for both parties.

[11] Leaving aside the costs component of the offer, the Calderbank offer was for an amount lesser overall than that which I awarded to Mr Cooper. I find an uplift of \$1,000 reasonable in the circumstances.

Orders

[12] Senate Investment Trust, through Crown Lease Trustees Limited, is ordered to pay Matthew Cooper the sum of \$4,375 as a contribution to his costs.

Trish MacKinnon
Member of the Employment Relations Authority