

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 202
3044112

BETWEEN	TROY ANDERSON Applicant
AND	METAL WORKS INNOVATION LIMITED Respondent

Member of Authority:	Vicki Campbell
Representatives:	Applicant in Person Penny Swarbrick for Respondent
Submissions received:	2 April 2019 from Applicant 13 March 2019 from Respondent
Determination:	5 April 2019

COSTS DETERMINATION OF THE AUTHORITY

A. Mr Anderson is ordered to pay to Metal Works Innovation Limited the sum of \$3,000 as a contribution toward costs within 28 days of the date of this determination.

[1] In a determination dated 8 February 2019 I held Mr Anderson was not unjustifiably dismissed.¹

[2] I reserved costs and invited the parties to resolve the issue between them. The parties have been unable to resolve the matter and I have received submissions.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the

¹ *Anderson v Metal Works Innovation Limited* [2019] NZERA 59.

power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.² The principles applying to costs are well settled and do not require repeating.³

[4] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴ The investigation meeting took one day which included the issuing of an oral determination. The starting point is therefore \$4,500.

[5] In his submissions Mr Anderson has explained that his wife is currently on ACC and the difference between her usual earnings and the reduced income she receives on ACC has affected their finances in a significant way. He told me his wife's medical condition has also had a negative effect on their finances. Mr Anderson has offered to contribute \$3,000 towards Metal Work's costs but says anything more than that will leave him in dire financial circumstances.

[6] Mr Anderson is unrepresented but has received advice in relation to the issue of costs and was represented during the investigation meeting. He has not provided any evidence to support his assertions relating to his finances.

[7] Metal Works is opposed to a reduction to the daily tariff, but is not averse to Mr Anderson paying three equal monthly instalments of \$1,500 each. Despite a direction to provide evidence of its costs in any submissions no evidence has been provided. I have not received any information about the costs incurred by Metal Works and am unable to assess the reasonableness of those costs.

[8] The parties were advised at the case management call that formal witness statements were not required. This should have reduced the exposure both parties had in the costs associated with the preparation for the investigation meeting. The daily tariff will be adjusted to take that into account.

[9] Costs to Metal Works based on the daily tariff, with an adjustment to \$3,000 is appropriate in all the circumstances.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.

[10] Mr Anderson is ordered to pay to Metal Works Innovation Limited the sum of \$3,000 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority