

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2019] NZERA 441
3039071

BETWEEN THOMAS RUTENE
 Applicant

AND WATER MART WAIRARAPA
 (2017) LIMITED
 Respondent

Member of Authority: Michael Loftus

Representatives: Alex Kersjes, advocate for the Applicant
 Richard McNaughton, on behalf of the Respondent

Submissions Received: 11 July 2019 from Applicant
 19 July 2019 from Respondent

Date of Determination: 24 July 2019

COSTS DETERMINATION OF THE AUTHORITY

[1] On 2 July 2019 I issued a determination concluding Mr Rutene had a personal grievance in that he had been unjustifiably dismissed.¹ Costs were reserved with the parties being advised to consider applying the Authority's normal tariff of \$4,500 a day to an investigation that took a third of a day. They have been unable to resolve the issue and Mr Rutene, as the successful party, now seeks a contribution toward the costs he incurred.

[2] Normally the Authority will use a daily tariff when addressing a costs claim and, as already said, the current starting point is \$4,500 for an investigation's first day.² From there adjustment may be made depending on the circumstances.

¹ [2019] NZERA 394

² refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808

[3] Mr Rutene seeks a contribution that exceeds that I indicated and asks for \$2,250 which is a bit over half his actual costs. In support of his claim he states the investigation meeting did not conclude till after midday meaning a half day – not a third. He also says further cost is attributable to the party's failure to agree which includes the preparation of a submission. He also notes that while the cost of attending mediation is not normally considered it should be remembered the parties had to be ordered to attend.

[4] In reply Water Mart suggests the initial indication should apply. In doing so it notes that amount has already been offered and suggests the applicant contributed to his costs by initially pursuing an untenable claim from which he subsequently resiled. It says this entrenched attitudes and made settlement impossible.

[5] My notes record a completion time of 11.30 which leads me to conclude a third of a day is a closer approximation to the time taken than half. I also note time was taken to consider a possible settlement which is akin to mediation and not investigation which, as Mr Rutene correctly observes, is time not normally considered in a costs setting.

[6] The way by which mediation came about is not normally a consideration and I place little weight on Water Mart's argument regarding initial positions given I am not aware of everything that occurred thereafter being precluded, by statute, from knowing what occurred in mediation and whether or not the position was altered.³

[7] In other words Mr Rutene's submission does not convince me it appropriate I change the initial indication and I apply the tariff on the basis the investigation took a third of a day.

Conclusion and orders

[8] For the above reasons I order Water Mart Wairarapa (2017) Limited pay Thomas Rutene \$1,500 (fifteen hundred dollars) as a contribution toward the costs he incurred in pursuing his claim.

Michael Loftus
Member of the Employment Relations Authority

³ Section 148(1) of the Employment Relations Act 2000