

[2] I reserved costs and invited the parties to resolve the issue between them. The parties have been unable to resolve the matter and ISO Limited has lodged a costs memorandum seeking a determination.

[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 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 half a day so the starting point is \$2,250.

[5] ISO has invited the Authority to consider offers it made to MUNZ to resolve the issue of costs and to uplift costs accordingly. ISO has invited me to treat its offers to settle the same way the Authority treats Calderbank offers to settle substantive matters.

[6] The primary purpose of a Calderbank offer is to avoid litigation costs and then to use the offer of settlement, if it is rejected unreasonably, to uplift the costs if the party making the Calderbank offer is successful in the substantive matters.

[7] The Authority will take into account any offers made by the parties to settle matters prior to an investigation meeting.⁵ Here the offers were made to resolve the issue of costs. In reaching my conclusions as to an appropriate level of costs I have declined ISO's invitation to treat the offers made to settle as if they were Calderbank offers.

[8] The Authority does not generally award costs on costs and there are no factors in this case that persuades me to depart from that practice. The notional daily tariff

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.

⁵ *Bluestar Print Group NZ Ltd v Mitchell* [2010] NZCA 385 at [18].

generally encompasses all costs associated with the investigation of an employment relationship problem including those incurred in preparing costs submissions.

[9] The substantive employment relationship problem between the parties was not overly complex and was largely a matter of interpretation and application of the availability provisions of the Act.

[10] MUNZ submits that costs should lie where they fall. MUNZ says that this was not a normal proceeding but was a situation where ISO had been in longstanding breach of its obligations.

[11] While I held the employment agreements between ISO and its employees were non-compliant with hours of work and availability provisions of the Act, I also recorded my acceptance of ISO's evidence that since an earlier determination on the issue, it had not applied the terms of the employment agreements strictly according to the words contained within the provisions relating to hours of work and availability. So while the written terms of the employment agreement were not compliant with the requirements of the Act, ISO was no longer enforcing the terms and so was no longer acting in breach of the Act.

[12] MUNZ and Mr Seymore were not successful in their applications for compliance orders. It is appropriate that an order for costs is made. In all the circumstances of this case an appropriate contribution for costs is \$2,250.

[13] The Maritime Union of New Zealand and Mr Seymore are jointly and severally ordered to pay to ISO Limited a total contribution to its costs of \$2,250 within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority