

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 182
3076034

BETWEEN ASHLEY NICKLIN
Applicant

AND J K J OBORN LIMITED
Respondent

Member of Authority: Anna Fitzgibbon

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

Investigation Meeting: On the papers

Submissions [and further Information] Received: 5 March and 16 April 2020 from the Applicant
Nothing from the Respondent

Date of Determination: 5 May 2020

COSTS DETERMINATION OF THE AUTHORITY

A. J K J Oborn Limited is ordered to pay to Mr Ashley Nicklin the sum of \$2,250 as a contribution to his costs within 28 days of the date of this determination.

Substantive Determination

[1] In a determination dated 4 March 2020, the Authority held that Mr Nicklin was unjustifiably dismissed by J K J Oborn Limited (Oborn). It was also found that Oborn had failed to pay Mr Nicklin holiday pay due to him and that a penalty was justified.¹

¹ [2020] NZERA 108

[2] Costs were reserved. Mr Morgan provided the Authority with information concerning costs incurred by Mr Nicklin in bringing his employment relationship problem.

[3] The discretion to award costs is to be exercised in a principled manner. 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] Mr Nicklin was entirely successful in his claim against Oborn. Mr Nicklin provided a witness statement as did two other witnesses he called on his behalf.

[6] Taking into account all of the circumstances and the information I have received from Mr Nicklin's advocate in respect of costs incurred, the Authority determines that an appropriate contribution by Oborn to Mr Nicklin's costs is \$2,250.

[7] Oborn is ordered to pay to Mr Nicklin the sum of \$2,250 as a contribution to his costs within 28 days of the date of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority

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

³ *PBO Limited 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.