

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2021] NZERA 587
3129199

BETWEEN

ANDREW MCCLYMONT,
MARGARET TAYLOR, STEVE
OSKRAM, MARK MCLENNAN,
MARK THOMSON and KELSEY
GRANT
Applicants

AND

RECEIVABLES MANAGEMENT
(NZ) LIMITED
Respondent

Member of Authority: Philip Cheyne

Representatives: Chrissy Gordon, advocate for the Applicants
Gillian Service and Dilshen Dahanayake, counsel for the
Respondent

Submissions received: 22 December 2021 from the Applicant
20 December 2021 from the Respondent

Date of Determination: 24 December 2021

COSTS DETERMINATION OF THE AUTHORITY

**A. Andrew McClymont, Margaret Taylor, Steve Oskram, Mark McLennan,
Mark Thomson and Kelsey Grant are to pay Receivables Management
(NZ) Limited costs of \$2,250.00 by 31 January 2022.**

[1] In the earlier determination, I found that the applicants had not raised their personal grievance claims within time. I also declined the applications for leave to raise the grievances

out of time. Costs were reserved. I have now received submissions from both parties. This determination resolves the issue of costs.

[2] The investigation was conducted on the papers. Acknowledging that, the respondent seeks costs based on half of the daily tariff rate for the first day of an investigation meeting (\$2,250.00) plus an uplift of \$750.00 to account for the costs incurred by the respondent. Invoices have been provided to show the actual costs substantially exceed the amount claimed.

[3] The advocate for the applicants supports the application of the daily tariff approach often applied by the Authority, submits that a quarter of the first day rate would be appropriate for a matter decided on the papers and says that there are no grounds for an uplift.

[4] As a matter of principle, the successful party is usually entitled to a contribution to their costs. The respondent was successful and is entitled to an award of costs. I agree with the representatives that assessing costs by applying the daily tariff approach is appropriate in this case. However, the representatives differ on the appropriate starting point.

[5] In support of the argument that costs of a quarter day are appropriate, there is a submission that, in the advocate's experience, costs awards for matters decided on the papers are generally in the vicinity of \$1,000.00 to \$1,250.00. That no doubt depends on the matter.

[6] Although an investigation meeting was not required, the respondent provided evidence by way of a number of affidavits in answer to the assertions that personal grievances had been raised within time and in response to the applications for leave. Written submissions were also provided. In my view, the investigation process can reasonably be compared to a half day investigation meeting dealing with evidence and submissions. That would result in costs of \$2,250.00.

[7] The submission in support of an uplift refers to the reasonable costs incurred. Counsel refers to an Employment Court judgment as precedent for an uplift from the daily tariff rate on account of costs actually incurred.¹ The relevant part of that case involved the Court exercising the Authority's power to award costs. There was a claim for indemnity costs.

¹ *Noble v Ballooning Canterbury.Com Limited* [2020] NZEmpC 167.

However, the Court held that costs should be assessed by applying a higher than usual tariff and fixed the starting point at the rate of \$7,500.00 per day, a figure that resulted in costs at approximately 66% of actual cost. It appears that the Court considered that the adoption of a higher daily tariff rate was warranted by the factors advanced in support of the indemnity costs claim, not because of the level of costs incurred by the party. The circumstances that brought the issue before the Court do not arise in the present case. The case does not support an uplift from the daily tariff that otherwise would apply in the present case.

[8] I agree with the applicants' advocate that there are no sufficient grounds to warrant an uplift beyond the figure for half the first day. Ordering an uplift solely on the basis that substantially greater costs were incurred would undermine the purpose of a standard daily tariff approach.

[9] There will be an order for costs set at the half of the daily rate for a one-day investigation meeting.

Philip Cheyne
Member of the Employment Relations Authority