

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2021] NZERA 77
3066113

BETWEEN STEPHEN JACKSON
 First Applicant

 ALAN BAILEY
 Second Applicant

 LINDA DALZELL
 Third Applicant

A N D THE BOARD OF TRUSTEES OF
 SOUTHLAND BOYS HIGH SCHOOL
 Respondent

Member of Authority: Peter van Keulen

Representatives: Mary-Jane Thomas, counsel for the Applicants
 Richard Harrison, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 3 February 2021 from the Applicant
 17 February 2021 from the Respondent

Date of Determination: 26 February 2021

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 18 December 2020¹, I determined that The Board of Trustees of Southland Boys High School had unjustifiably dismissed the applicants, Stephen Jackson, Alan Bailey and Linda Dalzell. I ordered the Board to pay compensation and reimbursement amounts to the applicants pursuant to s 123 of the Employment Relations Act 2000 (the Act).

¹ *Jackson & Ors v The Board of Trustees of Southland Boys High School* [2020] NZERA 527.

[2] I also reserved costs so that the parties could try to agree costs. The parties have not been able to agree costs and the applicants seek costs.

Application for costs

[3] Counsel for the applicants submits that I should make an award of costs of \$16,000.00 plus disbursements of \$71.56. Counsel accepts that the starting point for an assessment of costs is the daily tariff applied for the two days of investigation meeting in this matter; this is \$8,000.00. Counsel then says I should double the daily tariff as this matter was complex involving a significant amount of work in terms of the evidence and the submissions lodged after the investigation meeting.

[4] Counsel for the Board accepts that the applicants should be awarded costs as they were successful in their unjustified dismissal claims but he says I should not increase the daily tariff. Counsel says arguably there are grounds to reduce the daily tariff as, in fact, the applicants had limited success in terms of the claims but the Board does not wish to pursue this. Rather he says the daily tariff should be applied without any adjustment to reflect the fact that any additional work in terms of the evidence was largely created by the applicants relating to various matters that were not relevant to my determination. In contrast he says the Board's evidence was appropriate and responsible.

Analysis

Costs in the Authority

[5] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Act. In *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*² and other relevant Employment Court and Court of Appeal decisions,³ the Employment Court and the Court of Appeal have set out the principles I should apply and the approach I should adopt when exercising my discretion to award costs under clause 15 of Schedule 2 of the Act. I will consider these principles as they relate to his application for costs.

² *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808.

³ *Blue Star Print Group (NZ) Ltd v. Mitchell* [2010] NZCA 385; *Booth v. Big Kahuna Holdings Ltd* [2015] NZEmpC 4; *Stevens v. Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 28; *Davide Fagotti v. Acme & Co Ltd* [2015] NZEmpC 135; and *GSTech Limited v A Labour Inspector of MBIE* [2018] NZEmpC 127.

Costs should follow the event

[6] There is no dispute between the parties that costs should follow the event in this case.

Applying the daily tariff

[7] Likewise there is no dispute between the parties that I should apply the daily tariff; that is awarding a set amount for each day of the investigation meeting. The dispute is whether I should adjust the daily tariff.

Adjusting the daily tariff based on the complexity of the case and additional work

[8] I accept that the applicants' written evidence was detailed and it covered a number of incidents over a period of time. However, I do not believe this warrants an increase in the daily tariff; from my perspective the evidence is not largely out of step with the detail I would expect in a case where the evidence covers a long period of time and the amount of evidence is reflected in two days of investigation meeting. That is, I believe the daily tariff accounts for this level of work. If, as a result of the detail in the evidence, my investigation had been shorter than two days I might have been persuaded to make an adjustment.

[9] However, I am persuaded by the argument that the complex nature of the facts and legal issues required additional work on written submissions and this warrants an increase. I am prepared to adjust the daily tariff for this but only by a modest amount of \$1,000.00.

Conclusion

[10] I award costs to the applicants based on the daily tariff for a two day investigation meeting with a small increase bringing the total award to \$9,000.00.

Disbursements

[11] The applicants are also entitled to be paid for the disbursement they incurred in this matter, being the filing fee of \$71.56.

Order

[12] The Board of Trustees of Southland Boys High School must pay the applicants \$9,000.00 plus disbursements of \$71.56 as a contribution to their costs in this matter.

Peter van Keulen
Member of the Employment Relations Authority