

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 106
3117895

BETWEEN	STEVEN FRATER Applicant
AND	PREMIUM MOBILITY SERVICES LIMITED (Previously named AERO DRIVE RENTALS LIMITED) Respondent

Member of Authority:	Geoff O’Sullivan
Representatives:	Allen Goldstone, advocate for the Applicant Bryn McGoldrick, for the Respondent
Investigation Meeting:	On the papers
Submissions Received:	25 February 2022 from the Applicant 15 March 2022 from the Respondent
Date of Determination:	22 March 2022

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In my determination dated 17 January 2022 I determined that the applicant Steven Frater had been unjustifiably dismissed by Premium Mobility Services Limited (previously known as Aero Drive Rentals Limited) (PMS). I ordered PMS to reimburse Mr Frater for lost wages, and awarded compensation for the hurt and humiliation suffered by him as a result of his dismissal. I reserved costs in the hope that the parties would be able to resolve this issue between themselves. Unfortunately, they have been unable to do so and both parties have filed submissions in respect of costs.

[2] By consent, the investigation meeting was conducted through Zoom. The investigation meeting commenced at approximately 11.00am on 11 November 2021 and was finished by 1.00pm.

[3] The Authority has adopted and publicised a daily tariff approach as the starting point for considering costs. Good reason is required to depart from this approach. PMS has accurately set out that on the notional daily tariff, costs would equate to \$1,125. Mr Frater however claims \$4,500 and in support of the obvious uplift, claims that PMS failed to act in good faith by not responding in a reasonable time to correspondence, by failing to voluntarily attend mediation, and by failing to file a statement in reply. He further claims that the failure to participate in a case management conference with the Authority all added unnecessarily to the applicant's legal costs.

[4] PMS accepts liability for costs but says the daily tariff should apply and on its calculation it says that sum should be \$1,125. The calculation is based on the duration of the Zoom investigation meeting lasting two hours. PMS denies that its approach to the case increased Mr Frater's costs. It says there is nothing in its approach that would have increased Mr Frater's costs.

Principals

[5] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[6] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*¹ as confirmed in *Fagotti v Acme and Co Limited*². The principle set out in the above cases is that costs are modest. As to quantification, the principle is one of a reasonable contribution to costs

¹ [2005] 1 ERNZ 808.

² [2015] NZEmpC 135 at 114.

actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful parties conduct. Mr Frater has not put forward any compelling argument as to why there should be departure from the normal daily tariff rate. The investigation meeting was conducted under difficult circumstances and both parties' representatives conducted the case in a well organised and helpful way. No doubt this is a reason why the investigation meeting was of such a short duration.

Orders

[7] As said, I am not persuaded that there is any reason to depart from the normal tariff approach. Accordingly I order Premium Mobility Services Limited to pay Mr Frater the sum of \$1,125 towards costs together with the filing fee of \$71.56.

Geoff O'Sullivan
Member of the Employment Relations Authority