

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 118
3117401

BETWEEN MARIA ALAMEDA
 Applicant

AND MARKET GARDENERS LIMITED
 Respondent

Member of Authority: Peter van Keulen

Representatives: Adam Mapu, advocate for the Applicant
 Jeff Goldstein, advocate for the Respondent

Investigation Meeting: On the papers

Submissions Received: No submissions from the Applicant
 31 January 2022 from the Respondent

Date of Determination: 1 April 2022

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 14 December 2021 I found that Maria Alameda’s claims against Market Gardeners Limited (MG) were not established and I dismissed them.¹ I also reserved costs so that the parties could try to agree costs. The parties were unable to agree and now MG seeks costs.

Application for costs

[2] MG seeks an award of costs based on the usual Authority practice of applying a daily cost rate to the length of time taken in the investigation meeting i.e., the daily tariff.

¹ *Maria Alameda v. Market Gardeners Limited* [2021] NZERA 556.

[3] I have not received a response from Ms Alameda to MG's application for costs.

Analysis

Costs in the Authority

[4] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Act. The principles and approach adopted by the Authority in respect of this power are outlined in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*² and other relevant Employment Court and Court of Appeal decisions.³ I have applied these principles when determining this costs application.

Costs for MG

[5] The starting point is that costs should follow the event. As MG was successful in defending all of Ms Alameda's claims it is entitled to an award of costs.

Applying the daily tariff

[6] Whilst MG incurred costs in excess of the daily tariff rate it does not advance an argument for costs to be awarded on some other basis or at an increased daily tariff rate. This is entirely appropriate and the correct approach.

[7] I will award costs to MG based on the daily tariff without any increase.

[8] The current daily tariff is \$4,500.00 for the first day of an investigation meeting and \$3,500.00 for every subsequent day of an investigation meeting.

[9] The investigation meeting in this matter took one full day and an additional half day. It is current Authority practice to apply the daily tariff on the basis of part days, so, in this case the daily tariff applies for one and a half days. This means MG is entitled to \$4,500.00 for the first day of the investigation meeting and \$1,750.00 for the second half day.

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.

Order

[10] Ms Alameda is to pay MG \$6,250.00 as a contribution to MG's costs in this matter, within 14 days of this determination.

Peter van Keulen
Member of the Employment Relations Authority