

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2022] NZERA 136  
3094733

BETWEEN	JITESH THAKORLAL Applicant
AND	THE ALBERT CAFÉ AND BAR LIMITED Respondent

Member of Authority:	Leon Robinson
Representatives:	Mark Nutsford, advocate for the Applicant No appearance by Respondent
Submissions received:	23 March 2022 from the Applicant Nil from the Respondent
Determination:	11 April 2022

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Application for costs**

[1] Jitesh Thakorlal (Mr Thakorlal) succeeded in his application to the Authority to resolve his personal grievance that he had unjustifiably dismissed. He was granted formal orders for reimbursement and compensation to resolve his personal grievance. He now makes application that following that event, he ought to have an award of costs in his favour.

**The Authority's approach**

[2] Clause 15 of the 2nd Schedule to the Employment Relations Act 2000 gives the Authority a wide discretion to order a party to pay another party's costs and disbursements as the Authority thinks reasonable.

[3] The principles for assessing and awarding costs in the Authority are so well established that there is no need to set out all of these factors here, see *PBO Ltd (formerly Rush Security Ltd) v D Cruz*<sup>1</sup>.

[4] The Authority applies a 'notional daily tariff' based approach to assessing costs. The current notional daily tariff is \$4,500.00 for the first day of an investigation meeting and \$3,500.00 for each subsequent day.

[5] That approach gives the Authority a notional starting tariff, which must then be adjusted to reflect the particular circumstances of each case. There is therefore no need to adopt any other costs regime as the Authority can adjust the notional daily tariff, on a principled basis, as required.

[6] The Authority's notional daily tariff based approach is widely understood by those appearing in the employment institutions. The notional daily tariff basis approach to costs reflects the Authority's unique investigatory and problem solving role.

[7] The 'notional daily tariff' is the approach that has been used for assessing costs in this matter.

### **The reasoning**

[8] In its determination dated 11 March 2022 the Authority reserved the question of costs but encouraged the parties to agree the matter between them. In the event that the matter could not be agreed, Mr Thakorlal was permitted 14 days in which to submit an application and The Albert Café and Bar Limited was permitted a further 14 days thereafter to respond. Mr Thakorlal duly lodged his application on 23 March 2022. I am satisfied that Mr Nutsford has gone to considerable efforts to get The Albert Café and Bar Limited to respond to the application. The Albert Café and Bar Limited has taken no steps and Mr Thakorlal's application for a contribution to his costs is not challenged.

[9] I am satisfied that it is appropriate that Mr Thakorlal be granted an order that The Albert Café and Bar Limited make a contribution to his costs. Mr Thakorlal shall have the usual day one tariff payment of \$4,500.00 (Four thousand five hundred dollars) as a contribution to his costs.

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<sup>1</sup> [2005] 1 ERNZ 808.

**The result**

[10] I order The Albert Café and Bar Limited to pay to Jitesh Thakorlal the sum of \$4,500.00 (Four thousand five hundred dollars).

Leon Robinson  
Member of the Employment Relations Authority