

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 280
3129576

BETWEEN	JOSEPH KAIRAU Applicant
AND	DEPARTMENT OF CORRECTIONS Respondent

Member of Authority: Sarah Kennedy

Representatives: Barbara Buckett and Matt Belesky, counsel for the
Applicant
Peter Chemis and Jessica Taylor, counsel for the
Respondent

Determination: 26 August 2022

COSTS DETERMINATION OF THE AUTHORITY

Costs

[1] The parties have reached agreement between themselves that costs should be set at \$6,250.00 and accordingly ask the Authority to make an order.

[2] In my determination dated 12 May 2022, the applicant was unsuccessful in his claim for an unjustified dismissal.¹ The respondent, the Department of Corrections, seeks an order that the applicant pay it costs of \$6,250.00, based on the Authority's standard daily tariff.

[3] The applicant accepts the level of costs sought but seeks a payment plan to address the costs because of his financial position. The parties have agreed to a payment plan.

¹ *Kairau v Department of Corrections* [2022] NZERA 196

Analysis

[4] The Authority's jurisdiction to order a party to pay reasonable costs and expenses is exercised by applying some well-established principles to the particular circumstances of the case.² Those principles recognise that a successful party should receive a contribution to costs reasonably incurred in reaching that result; costs are discretionary and should generally be modest and may not be used to punish an unsuccessful party; the nature of the case may allow for an order that costs lie where they fall; and the Authority may use a notional 'daily rate' or 'tariff' as a starting point to assess costs.

[5] The Authority's current tariff for a one-day investigation meeting is \$4,500.00 for the first day and \$3,500.00 for any subsequent day of the matter.³ This amount is taken as an appropriate starting point for assessing a reasonable contribution to the costs incurred by a party in preparing for and taking part in an investigation meeting.

[6] The investigation meeting finished mid-afternoon on the second day and the respondent is only seeking costs for a half day for the second day. I accept the evidence about the applicant's financial circumstances and having weighed the relevant principles referred to above and the parties' submissions, the Authority considers it appropriate to make an order for costs and agrees that a payment plan is appropriate.

Orders

[7] Joseph Kairau is ordered to pay the Department of Corrections the sum of \$6,250.00 in instalments as agreed between the parties as a contribution towards its costs.

Sarah Kennedy
Member of the Employment Relations Authority

² Employment Relations Act 2000, Schedule 2, clause 15 and *PBO Ltd v Da Cruz* [2005] 1 ERZ 808 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135.

³ Practice Note 2 of the Employment Relations Authority, 29 April 2022.