

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 334
3112324, 3112355, 3112358 and
3111772

BETWEEN ALISON MCKNIGHT
First Applicant

BARRY WATKINS
Second Applicant

STEWART ANGELO
Third Applicant

RAY ENGLAND
Fourth Applicant

AND NZEC MANAGEMENT
LIMITED
Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Kam Bailey, advocate for the Applicant
Erin Davies, counsel for the Respondent

Submissions Received: 29 June 2022 from the Applicant
13 July 2022 from the Respondent

Date of Determination: 19 July 2022

COSTS DETERMINATION OF THE AUTHORITY

Introduction

[1] In a determination dated 16 May 2022 I upheld each of the Applicants’ claims that they had been unjustifiably dismissed and awarded remedies. I reserved the question of costs and

encouraged the parties to resolve this matter between themselves. They have been unable to do this, and each party has made submissions as to the appropriate contribution to costs.

[2] From the Authority's record, the investigation meeting took a day and a half to complete.

[3] The Authority normally uses a daily tariff when addressing a costs claim. The current starting point is \$4,500 for an investigation's first day and \$3,500 for each subsequent day. From there adjustments may be made depending on the circumstances. The applicants ask that the Authority make a determination based on the daily tariff for two full days, totalling a sum of \$8,000. The Applicants further ask that the Authority consider an uplift. The basis for this claim seems to be that as there were four applicants, and as there had been cancellations of the original investigation meeting scheduled to take place by Zoom, the Applicants' costs were higher than usual.

[4] No evidence as to why the investigation meeting which lasted a day and a half, should be extended to two days was given. Nor, has any evidence been provided (by way of invoice or otherwise) that indicates the Applicants' costs may have been higher than usual.

[5] The Respondent correctly notes that the length of the investigation meeting was a day and a half. It says that no costs should be awarded because the matter is currently under challenge in the Employment Court. It asks however, that if the Authority is inclined to award costs, then those should be reduced and no uplift from the daily notional rate should be awarded.

[6] The fact the Authority's determination is on appeal to the Court, is not a reason for the Authority not to make a costs determination. The Respondent also points out that the Applicants have not provided any detail regarding fee arrangements with their advocate. Further, they note that the Applicants were not entirely successful in that they did not succeed in their penalty claim and did not receive everything they claimed.

[7] Having considered the submissions, I see no reason to depart from the usual daily tariff.

Conclusion and orders

[8] I order NZEC Management Limited to pay a sum of \$6,250 as a contribution towards legal costs within 14 days of the date of this determination.

Geoff O'Sullivan
Member of the Employment Relations Authority