

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 358
3134678

BETWEEN LESLEY MCBRIDE
 Applicant

AND THE ULTIMATE CARE GROUP
 LIMITED
 Respondent

Member of Authority: Peter van Keulen

Representatives: Amy De-la Cruz, advocate for the Applicant
 Fiona Dalziel, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: No submissions from the Applicant
 7 July 2022 from the Respondent

Date of Determination: 3 August 2022

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 23 June 2022, I found that Lesley McBride was not successful with her claims against the Ultimate Care Group Limited.¹ In my determination I

¹ *Lesley McBride v The Ultimate Care Group Limited* [2022] NZERA 268.

reserved costs so that the parties could try to agree costs. The parties have been unable to agree and now Ultimate Care seeks costs.

Application for costs

[2] Counsel for Ultimate Care seeks an award of costs of \$10,000.00. Counsel seeks this amount, based on applying the daily tariff with an uplift because Ms McBride failed to accept two offers to settle this matter prior to the Investigation Meeting.

Analysis

Costs in the Authority

[3] 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* and other relevant Employment Court and Court of Appeal decisions.² I have applied these principles when determining this costs application.

Costs for the Ultimate Care Group

[4] The starting point is that costs should follow the event. As Ultimate Care was successful in defending Ms McBride's claims it is entitled to an award of costs.

Applying the daily tariff

[5] The next question is whether I should follow the normal practice of the Authority when setting costs, which is applying a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the

² *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808; *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.

daily tariff. 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.

[6] In this case there is no reason to depart from the practice of applying the daily tariff.

Increasing the daily tariff

[7] The remaining issue to consider is whether the daily tariff should be increased. In this case counsel for Ultimate Care says I should increase the daily tariff because Ms McBride failed to accept two offers of settlement.

[8] Settlement offers can be considered in an assessment of costs but those offers must be Calderbank offers. A Calderbank offer is an offer made by one party, normally a respondent, to settle the claim on terms. The offer is marked “without prejudice save as to costs”. The purpose of a Calderbank offer is to not only to attempt to settle a claim but by using the stated words the offering party is reserving the right to bring the offer to the Court’s (or in this case the Authority’s) attention if the claim is not settled. This is so that the offer can be used for assessing costs once the claim has been determined.

[9] In this case the two offers counsel for Ultimate Care refers to are not Calderbank offers so I cannot consider them in my assessment of costs.

[10] There is no basis to increase the daily tariff.

Conclusion

[11] As set out above, the daily tariff is currently \$4,500.00 for the first day of the investigation meeting and \$3,500.00 for the second and any subsequent days.

[12] In this case the investigation meeting took one day so I award \$4,500.00 based on the daily tariff.

Order

[13] Lesley McBride is to pay the Ultimate Care Group Limited \$4,500.00 as a contribution to its costs in this matter.

Peter van Keulen
Member of the Employment Relations Authority