

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 365
3135502

BETWEEN	RAIL AND MARITIME TRANSPORT UNION INC Applicant
AND	KIWIRAIL LIMITED Respondent

Member of Authority: Claire English

Representatives: Geoff Davenport, counsel for the Applicant
Penny Swarbrick, counsel for the Respondent

Submissions received: 25 July 2022 from Applicant
3 August 2022 from Respondent

Determination: 5 August 2022

COSTS DETERMINATION OF THE AUTHORITY

Background

[1] In the Authority's determination dated 14 July 2022, the applicant was successful in its claim regarding the entitlement of certain of its members to paid annual leave during employment.

[2] The applicant now seeks costs, on the basis of the daily tariff in respect of a one day investigation meeting, eg \$4,500. The respondent accepts that, if costs are to be awarded in this matter, the daily tariff would be an appropriate approach.

[3] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[4] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*¹ as confirmed in *Fagotti v Acme and Co Limited*². The relevant principle in respect of this matter is that costs are to be modest.

[5] In addition, I also take into account the Authority's Practice Note on costs³, which provides that:

From 2 May 2022 the Authority's discretion regarding costs is generally to be exercised on a presumption that the following categories of matter are not subject to a daily tariff and that parties bear their own costs:

...

(ii) disputes about the application, interpretation or operation of a collective agreement;

[6] This matter was a dispute about the application, interpretation, or operation of a collective agreement. This means that the starting point is that no costs are to be awarded. There were no special circumstances which might warrant either an uplift or a reduction in costs in the normal course, and neither party suggests that any such circumstances exist. Taken together, this means that no costs are properly to be awarded in this instance.

Orders

[7] Costs are to lie where they fall.

Claire English
Member of the Employment Relations Authority

¹ [2005] 1 ERNZ 808.

² [2015] NZEmpC 135 at 114.

³ Practice Note 2, found at: <https://www.era.govt.nz/footer/about-us/what-we-do/>