

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 512
3145044

BETWEEN LEWIS SHANKAR
Applicant

AND AQUAFLOW SPA & SWIMMING
POOLS LTD
Respondent

Member of Authority: Peter van Keulen

Representatives: Andrew McInnes, advocate for the Applicant
Michael McAleer, advocate for the Respondent

Investigation Meeting: On the papers

Submissions Received: 12 September 2022 from the Applicant
Nothing received from the Respondent

Date of Determination: 7 October 2022

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 26 August 2022,¹ I found that Aquaflow Spa & Swimming Pools Ltd had unjustifiably dismissed Lewis Shankar. I ordered Aquaflow to pay Mr Shankar remedies for compensation and lost remuneration. I also reserved costs so that the parties could try to agree costs. The parties were unable to agree and now Mr Shankar seeks costs.

Application for costs

[2] The advocate for Mr Shankar seeks an award of costs of \$2,000.00 and disbursements. The advocate says Mr Shankar was successful in his claim and costs should follow the event.

¹ *Lewis Shankar v Aquaflow Spa & Swimming Pools Ltd* [2022] NZERA 420.

He says further that the amount to be awarded should be based on applying the daily tariff to an investigation meeting that was just under one half day.

[3] Aquaflow did not respond to Mr Shankar's application for costs, declining to make any submissions and acknowledging that costs would be awarded on the basis of the daily tariff.

Analysis

Costs in the Authority

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

Costs for Mr Shankar

[5] The starting point is that costs should follow the event and there is no reason to depart from that principle. So, as Mr Shankar was successful with his claim against Aquaflow he is entitled to an award of costs.

Applying the daily tariff

[6] The normal practice of the Authority when setting costs is to apply 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 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.

[7] In this case there is no reason to depart from that normal practice.

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

³ *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.

[8] The advocate for Mr Shankar says the daily tariff should be applied at a rate of just under half of one day based on time spent in the investigation meeting and additional work done on submissions after the investigation meeting. The advocate says \$2,000.00 is the appropriate amount.

[9] I accept that applying the tariff to time in the investigation meeting plus some time for submissions after the investigation justifies an award of \$2,000.00 (including GST).

Disbursements

[10] Mr Shankar is also entitled to be paid the filing fee of \$71.56.

Order

[11] Aquaflo is to pay Mr Shankar \$2,000.00 as a contribution to his costs in this matter and a disbursement of \$71.56. This is to be paid within 14 days of the date of this determination.

Peter van Keulen
Member of the Employment Relations Authority