

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2022] NZERA 526  
3138521

BETWEEN TANIWHA RETAIL LIMITED  
Applicant

AND STEVEN DOBBS  
Respondent

SWITCH ELECTRICAL  
SERVICES (HAMILTON)  
LIMITED  
Respondent

ADAM JURISICH  
Respondent

Member of Authority: Peter van Keulen

Representatives: Bryce Ede for the Applicant  
Erin Burke, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 3 October 2022 from the Applicant  
20 September 2022 from the Respondent

Date of Determination: 12 October 2022

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**COSTS DETERMINATION OF THE AUTHORITY**

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## **The substantive determination**

[1] In a determination dated 12 September 2022, I found that Taniwha Retail Limited's claims against Steven Dobbs, Switch Electrical Services (Hamilton) Limited and Adam Jurisich (claim 3138521) were not made out and I dismissed them.<sup>1</sup>

[2] A related claim by Mr Dobbs against Taniwha (claim 3117859) was also resolved in the same determination. For that claim I found that Taniwha had overpaid Mr Dobbs' holiday pay but Mr Dobbs was not required to repay the overpayment, Taniwha had failed to transfer Mr Dobbs' mobile telephone number to him in breach of Mr Dobbs' employment agreement and Taniwha had unjustifiably dismissed Mr Dobbs.

[3] In my determination I reserved costs so that the parties could try to agree costs. The parties have been unable to agree costs and the respondent parties to Taniwha's claims (claim 3138521) seek costs against Taniwha.

## **Application for costs**

[4] Counsel for Mr Dobbs, Switch Electrical and Mr Jurisich, seeks an award of costs of \$6,575.00. Counsel seeks this amount based on applying the daily tariff to a one-day investigation meeting and then increasing that daily amount for additional work it undertook due to Taniwha's conduct of its claims.

[5] Taniwha says costs should lie where they fall. Taniwha says its claims against Mr Dobbs, Switch Electrical and Mr Jurisich were only part of the matters I determined between the parties. Mr Dobbs' claim against Taniwha was also resolved in my determination; noting that this claim took up the majority of the determination and Mr Dobbs had limited success. Essentially, Taniwha is saying that awarding costs against it when it had an equal if not greater amount of success in defending some of Mr Dobbs' claim is not appropriate.

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<sup>1</sup> *Steven Dobbs v Taniwha Retail Limited and Taniwha Retail Limited v Steven Dobbs and Ors* [2022] NZERA 455.

[6] Taniwha also says that its conduct of its claims was not problematic nor did it cause Mr Dobbs, Switch Electrical and Mr Jurisich to incur additional costs.

## **Analysis**

### *Costs in the Authority*

[7] 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.<sup>2</sup> I have applied these principles when determining this costs application.

### *Costs for Mr Dobbs, Switch Electrical and Mr Jurisich*

[8] Costs should follow the event. In this regard the point raised by Taniwha has some merit – if there are two sets of claims that have been resolved together then I should consider the effect of both sets of claims to establish overall success, which would then dictate to whom costs should be awarded.

[9] However, in doing this the outcome is not as Taniwha suggests. The assessment of success shows Mr Dobbs, Switch Electrical and Mr Jurisich were successful in defending Taniwha's claims and Mr Dobbs was successful with some of his claim against Taniwha. The fact that Mr Dobbs was not completely successful with all of his claim against Taniwha or, expressed the other way around the fact that Taniwha successfully defended some of Mr Dobbs' claim, does not disrupt the premise of success for Mr Dobbs. Applying *William*

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

*Coomer v JA McCallum and Son Limited*, I am satisfied that Mr Dobbs was sufficiently successful for the purposes of costs.<sup>3</sup>

[10] So, as Mr Dobbs, Switch Electrical and Mr Jurisich were successful they are entitled to an award of costs.

[11] The limitation that does apply to this award is that it is costs for Taniwha's claims against them and not costs for Mr Dobbs' claim as, costs are not sought in respect of Mr Dobbs' claim and, in any event it appears that Mr Dobbs did not incur any legal costs in pursuing his claim.

*Applying the daily tariff*

[12] 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 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.

[13] There is no reason to depart from this practice.

[14] The investigation meeting for Taniwha's claims took less than one day and my starting calculation is therefore to award three quarters of the daily tariff: \$3,375.00.

*Increasing the daily tariff*

[15] Counsel for Mr Dobbs, Switch Electrical and Mr Jurisich says I should increase the daily tariff for three things:

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<sup>3</sup> *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

- (a) Counsel produced the bundle of documents used in the investigation meeting; this is normally a cost that falls to an applicant but as Taniwha was not represented counsel did this at a cost of \$700.00.
- (b) Additional costs of \$875.00 were incurred because a scheduled investigation meeting was adjourned at Taniwha's request for reasons relating to Covid-19 restrictions.
- (c) Costs of \$500.00 were incurred for completing and lodging the memorandum seeking costs.

[16] In assessing these points, the first thing to note is the daily tariff is applied on the basis that costs incurred apply to all aspects of the process, i.e., the daily tariff is considered an acceptable level of contribution incurred for legal fees for an investigation meeting which includes all preparation and attendance at the investigation meeting.

[17] I am not satisfied that in this case the cost of creating a bundle and applying for costs should be accounted for outside of the daily tariff – there is nothing in the circumstances that means I should consider these costs as supernumerary to the daily tariff.

[18] Also, I am not satisfied that the costs associated with adjourning an investigation meeting because of Covid-19 restrictions should be borne by one party because that party was facing the restriction on its attendance, unless there is some exceptional circumstance attached to it. In this case I believe each party should bear its own costs for an adjournment arising out of Covid-19 restrictions.

[19] So, in conclusion I am not prepared to adjust the daily tariff as sought and costs remain at \$3,375.00 for an investigation meeting that took less than one full day.

## **Order**

[20] Taniwha Retail Limited is to pay Steven Dobbs, Switch Electrical and Adam Jurisich \$3,375.00 as a contribution to their costs in this matter; this must be paid within 14 days of the date of this determination.

Peter van Keulen  
Member of the Employment Relations Authority