

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 580
3147665

BETWEEN

YAEL SCOTT
Applicant

AND

THE CHIEF EXECUTIVE OF
THE DEPARTEMENT OF
CORRECTIONS
Respondent

Member of Authority: Sarah Kennedy

Representatives: Digby George Livingston, counsel for the Applicant
Peter Chemis and Jessica Taylor, counsel for the
Respondent

Submissions: 18 October 2022 from the Applicant
14 October 2022 from the Respondent

Determination: 9 November 2022

COSTS DETERMINATION OF THE AUTHORITY

Costs

[1] In my determination dated 12 May 2022, the applicant was unsuccessful in her claim for an unjustified dismissal.¹ In that determination, the parties were encouraged to resolve any issue of costs between them. The parties have not been able to resolve costs between themselves and have filed memoranda accordingly.

[2] The Chief Executive of the Department of Corrections, seeks an order that the applicant pay its costs of \$2,250.00, based on the Authority's standard daily tariff.

¹ *Scott v Chief Executive of the Department of Corrections* [2022] NZERA 508

[3] Ms Scott accepts the level of costs sought.

Analysis

[4] The Authority's jurisdiction to order a party to pay reasonable costs and expenses is exercised by applying some well-established principles to the particular circumstances of the case.² Those principles recognise that a successful party should receive a contribution to costs reasonably incurred in reaching that result; costs are discretionary and should generally be modest and may not be used to punish an unsuccessful party; the nature of the case may allow for an order that costs lie where they fall; and the Authority may use a notional 'daily rate' or 'tariff' as a starting point to assess costs.

[5] The Authority's current tariff for a one-day investigation meeting is \$4,500.00 for the first day and \$3,500.00 for any subsequent day of the matter.³ This amount is taken as an appropriate starting point for assessing a reasonable contribution to the costs incurred by a party in preparing for and taking part in an investigation meeting.

[6] The investigation meeting finished mid-afternoon. The respondent is only seeking costs for a half day. Weighing the relevant principles set out above, in circumstances where the applicant has been unsuccessful, the respondent is entitled to a contribution towards its costs.

Orders

[7] Yael Scott is ordered to pay the Chief Executive of the Department of Corrections the sum of \$2,250.00 within 30 days after the date of this determination.

Sarah Kennedy
Member of the Employment Relations Authority

² Employment Relations Act 2000, Schedule 2, clause 15 and *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].

³ Practice Note 2 of the Employment Relations Authority, 29 April 2022.