

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2023] NZERA 198
3166801

BETWEEN	JONATHAN TWYMAN Applicant
AND	CARTER HOLT HARVEY LVL LIMITED Respondent

Member of Authority:	Sarah Blick
Representatives:	Jonathan Twyman, in person David France, counsel for the respondent
Investigation Meeting:	On the papers
Submissions received:	17 March 2023 for the respondent 29 March 2023 for the applicant
Determination:	20 April 2023

DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination on 6 March 2023 finding the applicant Mr Jonathan Twyman did not have a personal grievance for unjustified disadvantage. No other claims were made, or remedies awarded to either party.¹

[2] The parties have been unable to resolve the issue of costs between themselves, and the respondent Carter Holt Harvey LVL Limited (CHH) has applied for an award of costs.

¹ *Twyman v Carter Holt Harvey LVL Limited* [2023] NZERA 103.

Costs principles

[3] The Authority's power to award costs is set out in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). The power is discretionary with its use governed by principles.² These include that costs will usually follow the event and the discretion is exercised in accordance with principle and not arbitrarily, considering equity and good conscience. When considering costs, the starting point is the Authority's daily tariff of \$4,500 for the first day of an investigation meeting.

Parties' positions on costs

[4] CHH says it has incurred legal costs in successfully defending Mr Twyman's claim. It seeks costs at the Authority's daily tariff for a one-day investigation meeting. CHH says its costs were necessary and reasonable in all the circumstances in view of the issues raised between the parties and the time required for the preparation of written witness statements and legal submissions. It says there is no reason for the Authority to depart from the daily tariff in this case. Counsel for CHH confirms its actual costs exceeded the costs now claimed.

[5] Mr Twyman reiterates the principle that costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct, and as such reference to CHH being successful should not form part of the Authority's consideration of costs. He says counsel for CHH are well aware of limits on costs and should have been prepared to act accordingly. In that regard, Mr Twyman says CHH's claim that its costs were necessary and reasonable are "false" and that exceeding the daily rate shows CHH acted in an unnecessary or unreasonable manner. Mr Twyman asks for CHH's application to be "rejected in its entirety".

[6] Mr Twyman instead asks that his own costs be considered. He says CHH rejected his initial request for mediation, and instead threatened disciplinary action. He suggests CHH did not act in good faith as an employer and that forced this chain of events. Mr Twyman himself wishes to claim the daily tariff rate of \$4,500 from CHH.

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

Costs assessment

[7] The Authority is entitled (and indeed is expected) to make an assessment of parties' success or otherwise when exercising its costs jurisdiction. CHH was entirely successful in defending Mr Twyman's claim against it, and as such is the successful party. CHH is entitled to a contribution to its costs.

[8] There is no basis for a costs award in Mr Twyman's favour. He represented himself before and during the Authority's investigation, has not incurred legal or representative costs, and was wholly unsuccessful in his claim.

[9] The investigation meeting did not take a full day – it took around four and a half hours. Based on the daily tariff I find the starting point should be \$3,375.

[10] I accept CHH's costs would reasonably have exceeded the daily tariff amount by some way, given the nature of the Mr Twyman's claims. I further note the Authority made no adverse findings against CHH for initially declining to attend mediation or for its commencement of a disciplinary process. There is no basis for adjusting the daily tariff amount from the starting point.

Conclusion

[11] Jonathan Twyman is ordered to pay \$3,375 in costs to Carter Holt Harvey LVL Limited within 21 days of the date of this determination.

Sarah Blick
Member of the Employment Relations Authority