

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 623
3139501 & 3142502
& 3149741

BETWEEN ANDREW BYRNE
 Applicant in 3139501 and
 Respondent in 3142502

AND COVERSTAFF
 RECRUITMENT LIMITED
 Respondent in 3139501 and
 Applicant in 3142502 and
 3149741

AND FILIMINO LEMISIO
 Respondent in 3149741

Member of Authority: Robin Arthur

Representatives: Andrew Byrne in person
 Filimino Lemisio in person
 Shelley Eden, counsel for Coverstaff Recruitment
 Limited

Submissions: From Coverstaff Recruitment Limited on 9 October
 2023. None from Mr Byrne or Mr Lemisio

Determination: 25 October 2023

COSTS DETERMINATION OF THE AUTHORITY

- A. Andrew Byrne and Filimino Lemisio are jointly and severally liable to pay costs of \$4,500 to Coverstaff Recruitment Limited within 28 days of the date of this determination.**

[1] An Authority determination issued on 25 September 2023 resolved issues in three interrelated proceedings involving Shamrock Recruitment Group Limited

(Shamrock), a company now amalgamated with Coverstaff Recruitment Limited (Coverstaff).¹

[2] The Authority found Mr Byrne was unjustifiably dismissed but, due to a lack of supporting evidence, no remedies were awarded; Mr Byrne was ordered to pay Coverstaff penalties of \$25,000 for breaching terms of his employment agreement before and after his employment with Shamrock finished; and Mr Lemisio was ordered to repay a debt and to pay a penalty to Coverstaff.

[3] Costs were reserved. The parties did not resolve the issue of costs and Coverstaff lodged a memorandum seeking an order for costs of \$4,500. Mr Byrne and Mr Lemisio were advised of the opportunity to respond within 14 days but did not lodge a reply memorandum.

Factors

[4] The Authority's jurisdiction to order a party to contribute to costs incurred by another party is exercised by applying well-established basic tenets to the particular circumstances of the case.² Those tenets recognise that a successful party should receive a contribution to its reasonably incurred costs and expenses; costs 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' as a starting point to assess costs.

[5] Undue rigidity in applying the daily rates is avoided by upward or downward adjustments appropriate to the particular case. Those adjustments may take account of settlement offers made by either party, the financial means of a liable party to pay costs, the preparation required in particularly complex matters and whether conduct of any party unnecessarily increased the costs they incurred.

Assessment

[6] These three matters were jointly investigated. As summarised in the substantive determination they had an unsatisfactorily long procedural history but ended with a one-

¹ *Byrne v Coverstaff Recruitment Limited* [2023] NZERA 549.

² Employment Relations Act 2000, Schedule 2 clause 15(1) and www.era.govt.nz/determinations/awarding-costs-remedies.

day investigation meeting. Coverstaff witnesses attended and were questioned in detail about their evidence. Mr Byrne and Mr Lemisio did not attend or explain their absence.

[7] As a starting point for the assessment of costs, Coverstaff was the effectively successful party. Mr Byrne and Mr Lemisio were ordered to pay money to the company while no remedies were awarded to Mr Byrne for his grievance.

[8] Coverstaff's memorandum on costs said there were no settlement offers impacting on the question of costs.

[9] In these circumstances the order for costs is appropriately set at the Authority's usual daily tariff for a one-day investigation meeting, that is \$4,500. It was a sum that Mr Lemisio and Mr Byrne could individually have faced in respect of Coverstaff's claims against them if the matters had been investigated separately, so it was appropriate that the single sum be borne jointly and severally.

[10] Mr Byrne and Mr Lemisio must pay the costs due to Coverstaff within 28 days of the date of this determination.

Robin Arthur
Member of the Employment Relations Authority