



would be filing costs submissions (after the deadline had elapsed), no costs submissions have been filed for Haven Falls.

### **Ms Tepania's claim for costs**

[3] Ms Tepania seeks a costs award of \$8,000 as a contribution to costs incurred in the substantive matter. She also seeks to recover a disbursement of \$71.56, being the cost of the filing fee to commence her proceeding. Invoices Ms Tepania has provided show she has incurred legal costs of \$15,473.89 (inclusive of GST) in respect of the substantive matter. She submits the award sought is warranted given:

- The investigation meeting for the substantive matter occupied a full day;
- She was the successful party and costs should follow the event;
- Haven Falls commenced a counterclaim against Ms Tepania which was destined to fail and has had the effect of increasing Ms Tepania's costs; and
- She made two effective settlement offers which were unreasonably rejected by Haven Falls.

### **Haven Falls' response**

[4] As set out above, Haven Falls did not comply with the Authority's costs timetable directions. No costs submissions have been received for Haven Falls.

### **Costs and principles**

[5] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary, and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction;
- Equity and good conscience is to be considered on a case-by-case basis;
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award;

- Costs generally follow the event;
- Awards will be modest;
- Frequently, costs are judged against a notional daily tariff.

### **Costs analysis**

[6] Ms Tepania was the successful party in the substantive matter. It is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party's costs. It is accepted that Ms Tepania has incurred actual costs in respect of this matter. She should receive a contribution to costs incurred.

[7] In assessing an appropriate award of costs, the notional daily tariff is a starting point.<sup>3</sup> The investigation meeting for this matter took one day. The applicable daily tariff is \$4,500 for the first day and is therefore the starting point.

[8] The next step in the assessment is to consider whether there are factors which warrant an increase or decrease in the tariff. There are no factors to warrant a decrease. Ms Tepania did not decline a settlement offer which had she accepted, would have meant she was better off.

[9] However, an increase in the daily tariff is warranted. Ms Tepania made without prejudice save as to costs offers (WPOs) to Haven Falls on 14 April 2023, and 15 September 2023. Both offers made clear that they would be used in a costs setting if required, and both would have resulted in a better outcome for Haven Falls.

[10] In respect of the latter of these two WPOs, this was made on 15 September 2023, only a few days before the 19 September 2023 investigation meeting. The Authority considers it more likely than not that by this stage, a significant portion of the preparation work for the investigation would already have been completed, and costs would have been incurred. As such, little weight is given to the 15 September 2023 WPO.

[11] However, the 14 April 2023 WPO is of more relevance. Had this offer been accepted, considerable costs would have been avoided by the parties.

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<sup>3</sup> Practise Note 2 'Costs in the Employment Relations Authority', 29 April 2022.

[12] What may be an appropriate increase in the tariff involves consideration of a reasonable contribution to costs reasonably incurred.

[13] Although Ms Tepania seeks an uplift in the daily tariff, partly in relation to increased costs in relation to Haven Falls' counterclaim against her, there is no information before the Authority which quantifies the actual expenditure in relation to the counterclaim. In any event, Ms Tepania's response to the counterclaim was contained in one single paragraph of her witness statement. Any increased costs in relation to this issue would be nominal. Furthermore, Haven Falls withdrew its counterclaim, meaning the Authority was not required to devote any time to these issues at the investigation meeting. As such, Haven Falls' counterclaim is not the basis for an increase in the daily tariff.

[14] On the information received by the Authority, the total costs incurred by Ms Tepania after the first settlement offer were \$15,473.89 (including GST). Weighing all the relevant factors and assessing an appropriate uplift in the daily tariff, including that Ms Tepania was wholly successfully in her claim, a reasonable contribution to costs reasonably incurred is \$5,500.

[15] It is also reasonable that Ms Tepania is reimbursed for the costs of the filing fee, being \$71.56.

### **Outcome**

[16] Within 21 days of today's date, Haven Falls Funeral Home Limited is ordered to pay Kim Tepania \$5,500 without deduction being a contribution to costs, together with an additional payment of \$71.56 being the cost of the filing fee incurred in relation to the matter.

Jeremy Lynch  
Member of the Employment Relations Authority