

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 708
3137021

BETWEEN GEOFFREY PAUL MARTIN
Applicant

AND THE PRIORY IN NEW
ZEALAND OF THE MOST
VENERABLE ORDER OF
THE HOSPITAL OF ST
JOHN OF JERUSALEM
Respondent

Member of Authority: Davinnia Tan

Representatives: Louise Smith, advocate for the Applicant
Charlotte Parkhill, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 1 November 2023 Respondent
No submissions from Applicant

Determination: 27 November 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] On 11 October 2023 the Authority issued a determination in this matter where it found in favour of the respondent, the Priory in New Zealand of the Most Venerable Order of the Hospital of St John of Jerusalem (St John), in all matters. The Authority found that St John did not act unjustifiably towards Mr Martin and that Mr Martin did not have a personal grievance. The Authority found no failure of St John requiring any orders made under the Employment Relations Act 2000 (the Act).

[2] In that determination, Member Dumbleton provided St John the option to make an application for costs within 21 days of the date of his determination, and any reply by Mr Martin to be made within 21 days of any application made.

[3] On 1 November 2023, St John made an application for a costs award of \$2,250.00 from Mr Martin. Mr Martin has not responded.

Submissions

[4] Counsel for St John acknowledged that the matter was heard on the papers and that there was no requirement to attend an investigation meeting in person. However, she submitted that St John has incurred costs significantly in excess of the notional tariff in defending Mr Martin's personal grievance.

[5] Counsel submitted that given the wide nature of the claim and volume of submissions required over the span of more than one year, St John's actual costs are within the range of what is reasonable. Further, there is no reason for the Authority to depart from the principle that costs follow the event and hence St John should be entitled to a contribution towards its legal costs.

[6] To acknowledge that the matter was heard on the papers but also the significant legal preparation required, St John seeks half the notional tariff of \$4,500.00 as a contribution towards its legal costs.

Principles

[7] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[8] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*¹ as confirmed in *Fagotti v Acme and Co Limited*.² The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to

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

² *Fagotti v Acme and Co Limited* [2015] NZEmpC 135 at 114.

be used as a punishment, and as the Court of Appeal has stated several times, a “steely approach” is to be adopted when considering Calderbank offers.³

[9] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.⁴

[10] The daily tariff is usually taken as a starting point, although is not to be used in a rigid manner, with principled adjustments made having regard to the to the particular characteristics of a case.⁵

Analysis

[11] Having reviewed St John’s submissions on the matter, I agree that as the successful party it is entitled to costs.

[12] I accept that the nature of the substantive claim was wide and involved a volume of submissions provided to the Authority on 11 March, 15 June and 6 July 2022, and 6 March and 4 July 2023. This would have required significant legal preparation over the course of more than one year, notwithstanding that the matter was heard on the papers.

[13] For these reasons and coupled with the well established principle that costs are to be modest, I accept St John’s submission that its application for costs at half the notional tariff is reasonable and appropriate.

Orders

[14] Accordingly I order Mr Martin to pay the St John \$2,250 as a contribution to legal costs and the Employment Relations Authority filing fee of \$71.56, a total of \$2,321.56 within 28 days of the issuing of this determination.

Davinnia Tan
Member of the Employment Relations Authority

³ *Health Waikato v Elmsly* [2004] 1 ERNZ 172 (CA) at [53] and *Blue Star Print v David Mitchell* [2010] NZCA 385 at [20].

⁴ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

⁵ Practice Note 2: Costs in the Employment Relations Authority, issued 29 April 2022.