

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2023] NZERA 740
3183459

BETWEEN IAN JOHNSTON
Applicant

AND DACOMBE MOTOR COMPANY
LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Applicant in person
Gordon Dacombe for the Respondent

Investigation Meeting: On the papers

Submissions Received: 16 November 2023 and 30 November 2023 from the
Applicant
30 November 2023 and 1 December 2023 from the
Respondent

Date of Determination: 13 December 2023

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 6 November 2023, I found that Dacombe Motor Company Limited (DMC) had acted in a way that was unjustifiable and had caused a disadvantage to Ian Johnston. I ordered DMC to pay Mr Johnston \$7,000 in compensation.¹

¹ *Ian Johnston v Dacombe Motor Company Limited* [2023] NZERA 653.

[2] In my determination I reserved costs so that the parties could try to agree costs. The parties were unable to agree and now Mr Johnston seeks an order for costs.

Application for costs

[3] Mr Johnston seeks a payment of costs as he was successful with part of his claim against DMC. He acknowledges that he is entitled to only part of the daily tariff and will accept whatever award I consider appropriate. He does however submit that his claim has cost him more in fees than he has been awarded.

[4] DMC says it should not pay costs as it has incurred its own costs in this matter and because it had offered Mr Johnston a sum to settle his claim which was less than the amount he received in my determination.

Analysis

Costs in the Authority

[5] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.²

Costs for Mr Johnston

[6] The starting point is that costs should follow the event. Mr Johnston was successful with part of his claim so he is entitled to an award of costs.

Applying the daily tariff

[7] In this case I will follow the normal practice of the Authority when setting costs, which is applying a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff.

² For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

[8] The investigation meeting took one half day. On this basis the starting point for a cost award is \$2,250.00 – based on the current daily tariff of 4,500.00 for the first day of an investigation meeting.

Adjusting the daily tariff

[9] From this point I need to consider whether the daily tariff amount should be adjusted.

[10] In this case Mr Johnston's refusal of an offer, which was better than the amount he won in his claim, is relevant. This was an offer of \$15,570, which Mr Johnston rejected on 19 July 2022.

[11] I accept this is a basis to reduce the daily tariff and assess that reduction as being \$750.

[12] This means Mr Johnston is entitled to be paid \$1,500 as a contribution to the costs he incurred.

Disbursements

[13] Mr Johnston is also entitled to be paid the filing fee of \$71.56.

Order

[14] Dacombe Motor Company Limited is to pay Ian Johnston \$1,500.00 as a contribution to his costs in this matter and disbursements of \$71.56.

Peter van Keulen
Member of the Employment Relations Authority