

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 9  
3132836

BETWEEN                      ADIN NASAR  
   Applicant

AND                              EXPERT IT GROUP  
   LIMITED  
   First Respondent

   ZABUILLAH SHARIF  
   Second Respondent

Member of Authority:        Marija Urlich

Representatives:              Gerardus Elwell, counsel for Applicant  
   Akeripa Seumanutafa and Iese Tata, counsel for  
   Respondent

Investigation Meeting:        On the papers

Determination:                12 January 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     The Authority issued a determination on 5 December 2022 which found Mr Nasar’s claim was unsuccessful because he had not been in an employment relationship with Expert IT Group Limited (Expert IT).<sup>1</sup> Costs were reserved and a timetable set for memoranda to be filed if the parties were unable to resolve this issue themselves. Expert IT filed within the set timetable.<sup>2</sup> There is information before the Authority which indicates Mr Nasar’s view on costs.

**Expert IT’s claim for costs**

[2]     Expert IT seeks a costs award for hearing time of two days at the daily tariff totalling \$8,000 plus an additional \$6,480 for costs incurred in the initial response to

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<sup>1</sup> *Adin Nasar v Expert IT Group Limited & Anor* [2022] NZERA 643.

<sup>2</sup> Mr Sharif has not sought a separate award of costs.

Mr Nasar's personal grievance, preparation and attendance at mediation, preparation for the Authority investigation meeting and research. It also seeks to recover disbursements of \$100 which are printing and stationary costs. It submits such an award is warranted given:

- it was successful in its claim and costs should follow the event;
- it has tried to resolve the substantive matter including making a without prejudice offer save as to costs dated 23 February 2022 and being willing to resume mediation during the investigation meeting;
- it tried to resolve costs with Mr Nasar; and
- the actual costs incurred were reasonable and necessary and warrant an uplift in the daily tariff because of the complexity of the matter and Mr Nasar's failure to adopt a more realistic and pragmatic approach to this matter including not accepting the settlement offer and declining to resume mediation.

### **Mr Nasar's response**

[3] Mr Nasar indicated through counsel in closing submissions for the substantive matter that a costs award of the Authority's daily tariff against the unsuccessful party would be appropriate.

[4] Appropriately and helpfully counsel for Expert IT provided the parties' email exchange concerning resolution of costs. In those emails Mr Nasar indicates, through counsel, that an award of no more than one day of the daily tariff is warranted because matters outside the parties' control prevented the investigation meeting being concluded in a single day.

### **Costs 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] Expert IT was the successful party. 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 Expert IT has incurred actual costs in respect of this matter. It should receive a contribution to costs incurred.

[7] In assessing an appropriate award of costs the notional daily tariff is a starting point. The applicable daily tariff is \$4,500 for the first day and \$3,500 for any subsequent day of the same matter.<sup>3</sup> The first day was interrupted by a fire alarm and the Authority was unable to sit late to hear all the available evidence. Expert IT was directed to file further information which was dealt with at the resumed investigation meeting as was the balance of the evidence and Mr Nasar's closing submissions. The resumption lasted two hours. Expert IT subsequently filed written closing submissions to which Mr Nasar provided a reply. The length of the investigation meeting was less than a usual hearing day plus two hours. The starting point for costs, applying the Authority tariff, is the first day notional daily tariff of \$4,500.

[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. An increase in the daily tariff is warranted given more investigation meeting time was required than originally timetabled though, this must be balanced by factors influencing that requirement which include matters wholly outside the control of the parties. The without prejudice save as to costs settlement offer is stale and can be accorded no weight. Mediation costs are not usually awarded and there is no basis in this matter to

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

move from the usual approach. While I accept there were key disputes in the evidence to resolve this was not a matter of such complexity as to warrant an increase in the tariff.

[9] Having assessed all the relevant factors a reasonable contribution to Expert IT's costs is a total of \$5,500.

[10] The \$100 amount claimed for disbursements is both actual and reasonable and is awarded accordingly.

### **Outcome**

[11] Adin Nasar is ordered to pay Expert IT Group Limited the following sums:

- (i) \$5,500 without deduction being a contribution to costs;
- (ii) \$100 without deduction to reimburse disbursements incurred.

Marija Urlich  
Member of the Employment Relations Authority