

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 181  
3184119

BETWEEN

HINA SEHDEV  
Applicant

AND

FRESH 4 LESS NZ LIMITED  
Respondent

Authority Member: Natasha Szeto

Representatives: Paul Mathews, representative for the Applicant  
Ashok Rohit, director of the Respondent

Submissions and information received: 3 February 2024 from the Applicant  
20 February 2024 from the Respondent

Determination: 28 March 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 12 January 2024 the Authority issued a determination in this matter, finding that Ms Sehdev had been unjustifiably dismissed from her employment with Fresh 4 Less NZ Limited (Fresh 4 Less).<sup>1</sup>

[2] In that determination, the parties were encouraged to resolve any issue of costs between them, and the Authority referred to its usual practice of applying the daily tariff to determine costs.

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<sup>1</sup> *Sehdev v Fresh 4 Less NZ Limited* [2024] NZERA 16.

[3] Ms Sehdev says that she attempted to negotiate settlement of costs in good faith, but the parties have been unable to resolve the issue. She now seeks costs at the daily tariff and says there is no reason for an uplift or decrease.

[4] Mr Rohit for the Respondent said in correspondence to the Authority that he is “struggling to pay the whole amount” and asked for the Authority to “suggest some instalments”. He confirmed the company did not intend to file submissions on costs. The Authority reminded Mr Rohit of his ability to provide evidence of the company’s financial situation including his personal situation (if relevant), if he wanted the Authority to consider reducing costs or ordering the payment of costs by instalment. There has been no further response from Fresh 4 Less.

[5] Consequently I now proceed to determine the costs application on the information before me.

### **Analysis**

[6] The power of the Authority to award costs is set out in clause 15 of Schedule 2 of the Employment Relations Act 2000. Costs are at the discretion of the Authority.<sup>2</sup> The Authority has adopted a daily tariff approach as the starting point for considering costs which is now well known. The current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.<sup>3</sup>

[7] The parties can expect the Authority to adhere to the approach of applying the daily tariff, unless there is good reason to depart from it.

[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*<sup>4</sup> as confirmed in *Fagotti v Acme and Co Limited*.<sup>5</sup> It is a principle set out in *Da Cruz* that costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party’s

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<sup>2</sup> *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622.

<sup>3</sup> Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi (February 2024) at: <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>

<sup>4</sup> [2005] 1 ERNZ 808.

<sup>5</sup> [2015] NZEmpC 135 at 114.

conduct. The financial situation of the party paying costs can be a relevant factor to take into account. Awards made should be modest, and consistent with the Authority's equity and good conscience jurisdiction.

[9] As the successful party, Ms Sehdev is entitled to a contribution to her costs actually and reasonably incurred.

[10] I am not aware of any good reason to depart from the tariff. I adopt the daily tariff of \$4,500 as being the appropriate starting point for assessing costs. The investigation meeting ran for almost half a day. I consider it fair and reasonable that Fresh 4 Less pays Ms Sehdev \$2,250 (being half of the daily tariff for a one-day investigation meeting) towards her legal costs, as well as reimbursing Ms Sehdev the Authority's filing fee.

### **Orders**

[11] For the reasons set out above, I order Fresh 4 Less NZ Limited to pay Hina Sehdev within 28 days of the date of this determination:

- (a) The sum of \$2,250 as a contribution to her legal costs; and
- (b) The sum of \$71.55 reimbursement for the filing fee.

Natasha Szeto  
Member of the Employment Relations Authority