

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 190
3217659

BETWEEN	MZHZ Applicant
AND	LPS MESH LIMITED T/A TASKA 360 First Respondent
AND	CHIEF EXECUTIVE OF MINISTRY OF SOCIAL DEVELOPMENT

Member of Authority:	Rachel Larner
Representatives:	Applicant in person Jonathan Hunter, counsel for the First Respondent Peter Chemis and Erika Hendy, counsel for the Second Respondent
Investigation:	On the papers
Submissions and other information:	14 March 2024 from the Respondents 28 March 2024 from the Applicant
Date of Determination:	4 April 2024

COSTS DETERMINATION OF THE AUTHORITY

Non-publication order

[1] The Employment Court issued an interim non-publication order in a Minute dated 28 March 2024, that prohibited publication of the applicant's name and information that might identify him until further order of the Court.

[2] The Court's Minute named the parties, so in order to comply with the interim non-publication order the Authority has only included the Court's file number and date of the Minute in the citation.¹

[3] The Authority anonymised its substantive determination dated 29 February 2024 in order to preserve the applicant's challenge rights against the decision to decline his application for a permanent non-publication order.²

[4] The applicant has challenged the Authority's preliminary determination.

Employment Relationship Problem

[5] The applicant's claim that he was in an employment relationship with one or both respondents did not succeed.

[6] The respondents, as the successful parties, were entitled to an award of costs in their favour. The parties were encouraged to resolve costs by agreement, but if agreement was not reached a timetable was set for the parties to lodge costs submissions.

The Authority's investigation

[7] Costs have been determined 'on the papers'.

[8] The second respondent, the Chief Executive of the Ministry of Social Development, advised the Authority on 14 March 2024 that it did not seek costs.

[9] The first respondent, LPS Mesh Limited trading as Taska 360 (Taska) lodged costs submissions on 14 March 2024, in which it sought an order that the applicant contribute \$9,000 towards its actual legal costs.

[10] The applicant lodged costs submissions on 28 March 2024. He said costs should be awarded to the first respondent as per the notional daily tariff, which he submitted should not be uplifted.

¹ ECT 112/2024, Minute dated 28 March 2024.

² *MZHZ v LPS Mesh Ltd t/a Taska 360 & Chief Executive of the Ministry of Social Development* [2024] NZERA 121.

Issues

[11] The following issues are to be determined:

- (a) What is the notional starting point for assessing costs in this matter?
- (b) Should the notional starting tariff be adjusted?
- (c) What costs should be awarded?

Relevant law

[12] The Authority derives its power to award costs from clause 15 of Schedule 2 of the Employment Relations Act 2000 (“the Act”).

[13] The Authority usually adopts a notional daily tariff-based approach to assessing costs. The notional daily tariff is currently \$4,500 for the first day of an investigation meeting and then \$3,500 for each subsequent day.

[14] Although costs are discretionary, an unsuccessful party will normally be required to contribute to the successful party’s actually incurred legal costs. The Authority’s costs discretion must be exercised on a principled basis.

[15] The Employment Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz and Fagotti v Acme & Co Limited* set out the costs principles that the Authority must have regard to when assessing costs.³

[16] These are so well known there is no need to set them out again here. These principles have guided the Authority’s assessment of costs in this matter.

What is the notional starting point for assessing costs?

[17] The preliminary determination involved an ‘on the papers’ investigation. The Authority indicated in the preliminary determination that for the purposes of assessing costs in accordance with the Authority’s usual notional daily tariff-based approach, this matter should be treated as if it had involved a half-day investigation meeting.

³ *PBO Ltd v Da Cruz* [2005] ERNZ 808 and *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

[18] Because the current notional starting tariff for a one-day investigation meeting is \$4,500, on a pro-rata basis the notional starting tariff for assessing costs in this matter is therefore \$2,250.

Should the notional starting tariff be adjusted?

[19] Having fixed a notional starting tariff, consideration needed to be given to whether or not it should be adjusted to reflect the particular circumstances of this case.

Should the notional starting tariff be decreased?

[20] The Authority is not aware of any factors that should result in the notional starting tariff being reduced, and the parties did not identify any. Accordingly, the notional starting tariff was not decreased.

Should the notional starting tariff be increased?

[21] Taska said it incurred actual costs of \$28,278.51. It submitted that the notional starting tariff should be increased by a factor of four, to reflect what it claimed was “the unnecessary costs [it] incurred responding to the Applicant’s claim.”

[22] The Authority did not accept that submission.

[23] This was a relatively straightforward matter, in which the law is well settled. The disputed status of the relationship between the parties necessarily required an intensive factual investigation into how the relationships the applicant had with each respondent worked in practice.

[24] The applicant as a self-represented party cannot be expected to bring the same discernment to the production of relevant evidence that experienced counsel is able to. However, his conduct did not reach the level of that which could objectively result in his presentation of evidence unnecessarily or unreasonably increasing the respondents’ actual costs.

[25] The applicant demonstrated that he was prepared to take on guidance the Authority gave him (for example he was told that he had to remove documents that were not relevant to the disputed status issue from the 700 pages he had put forward as his intended bundle of relevant documents). He also adjusted his lengthy affidavit in order to remove irrelevant information, in response to relevancy concerns the Authority had identified.

[26] While this matter would have been managed more efficiently by counsel, the Authority was satisfied that the applicant was doing his best to present evidence he believed was relevant to the preliminary issue the Authority was required to determine.

[27] The factors that would justify an increase being made to the notional starting tariff have therefore not been established. Accordingly, the notional starting tariff should not be increased.

What costs should be awarded?

[28] Within 28 days of the date of this determination, the applicant is ordered to pay Taska \$2,250 towards its actual legal costs.

Rachel Larmer
Member of the Employment Relations Authority