

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 494
3241039

BETWEEN ADELE ROSS
Applicant

AND S & D DECORATORS
LIMITED
Respondent

Member of Authority: Shane Kinley

Representatives: Rachel Rolston and Warwick Reid, advocates for the
Applicant
Josh Speck, for the Respondent

Submissions received: 16 July 2024 from Applicant

Determination: 19 August 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] On 4 July 2024, I issued a determination in this matter finding Adele Ross was unjustifiably dismissed by S & D Decorators Limited (S&D) and S&D had not provided any reason to justify reductions in Ms Ross' pay, non-payment of overtime or evidence she opted out of Kiwisaver contributions. I declined to consider S&D's claims for remedies as I considered they mainly related to claims arising from a sub-contracting relationship and any employment-based claims were not raised correctly as counterclaims.¹

[2] I ordered S&D pay Ms Ross a combined amount of \$8,568.92 for arrears of wages, unpaid overtime, compensation for lost benefits, lost wages and unpaid holiday pay. I also ordered S&D pay Ms Ross compensation for hurt and humiliation of \$4,500

¹ *Ross v S & D Decorators Limited* [2024] NZERA 401 at [64].

under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act) (being \$5,000 reduced by 10% to reflect contribution under s 124 of the Act).²

[3] In that determination, I encouraged the parties to resolve any issue of costs between them, and made reference to the Authority's usual practice of applying the daily tariff to determine costs.

[4] The parties have not been able to resolve costs between themselves and Ms Ross' advocate filed memoranda on 16 July 2024 seeking a contribution to its costs.

[5] As no costs submissions have been received for S&D, I now proceed to determine the matter.

Contribution to Costs

[6] The power of the Authority to award costs is contained in cl 15 of schedule 2 of the Act. 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.³

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

[8] As the investigation meeting for this matter was held in person and finished mid-afternoon, I expressed the preliminary view the notional daily rate for one day was the appropriate starting point for a determination of costs.⁴

[9] Ms Ross submits a contribution to costs of \$4,500 would be appropriate, based on a starting point of a one-day investigation meeting. Ms Ross submitted she has been "rendered an account" for a higher amount, with the costs involved reasonable.

[10] 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*⁵ as confirmed in *Fagotti v Acme and Co Limited*⁶. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one

² Ibid at [65].

³ For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

⁴ Note 1 above at [69].

⁵ [2005] 1 ERNZ 808.

⁶ [2015] NZEmpC 135 at 114.

of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful party's conduct.

[11] The correct starting point is the tariff for a one-day investigation meeting, being \$4,500. I accept the submissions for Ms Ross that there are no circumstances which would require an upward or downward adjustment from this amount. No adjustment is made.

Orders

[12] S & D Decorators Limited is ordered to pay to Adele Ross within 28 days of the date of this determination the sum of \$4,500 as a contribution to costs.

Shane Kinley
Member of the Employment Relations Authority