

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 556  
3234219

BETWEEN	NATHAN CORRIGAN Applicant
AND	PRIME FOCUS SECURITY LIMITED (IN LIQUIDATION) First Respondent
AND	LEVI MENZIES Second Respondent

Member of Authority: Sarah Blick

Representatives: Daniel Church, counsel for the applicant  
First respondent not represented  
Lawrence Anderson, advocate for the second respondent

Investigation Meeting: On the papers

Information and submissions received: 23 August 2024 from the parties

Determination: 17 September 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 26 July 2024 the Authority issued a determination in this matter, in which compliance orders were made against both respondents.<sup>1</sup> The parties were encouraged to resolve any issue of costs between them, which has not been possible.

**Parties' submissions**

[2] Mr Corrigan seeks costs against Mr Menzies as the only respondent who participated in the Authority's investigation. He says this matter should not have required an all-day investigation meeting, it being a "simple and straightforward"

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<sup>1</sup> *Corrigan v Prime Focus Security Limited (in liquidation) and Anor* [2024] NZERA 448.

compliance order application which should have been able to be dealt with on the papers. Mr Corrigan says the starting point is the daily tariff of \$4,500 but that it should be more than doubled. This is based on his representative's communications being "aggressive and hostile" and that the communications demonstrate Mr Menzies' unrealistic view of the risk to him, as shown in the successful outcome. Mr Corrigan also seeks an additional \$1,000 as costs on costs in light of his offer to settle costs at the daily tariff amount.

[3] Many of the submissions provided on behalf of Mr Menzies focused on objections to the outcome of the Authority's investigation and the conduct of Mr Corrigan's representatives. It was however pointed out that an invoice provided for Mr Corrigan showed costs invoiced were \$4,477.08, far short of the more than \$10,000 claimed. Mr Menzies also submitted costs on costs could not be claimed.

### **Costs principles**

[4] The Authority has the power under clause 15 of Schedule 2 of the Employment Relations Act 2000 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.

### **Analysis**

[5] Mr Menzies has filed a challenge in the Employment Court which is yet to be resolved. I see no reason why the issue of costs in the Authority cannot be dealt with now.

[6] Mr Corrigan was the successful party and is entitled to receive a contribution to costs incurred.

[7] In assessing an appropriate award of costs the notional daily tariff of \$4,500 is the starting point. A full day investigation meeting was held, so the full tariff is the starting point.

[8] The next step in the assessment is to consider whether there are factors which warrant an increase or decrease in the tariff.

[9] The Authority does not consider the parties' conduct warrants an adjustment to costs. First, I do not agree that this matter was as simple and straightforward or amenable to being heard on the papers as was submitted by counsel for Mr Corrigan. It involved disputes in evidence and applications for compliance orders against a company in liquidation and a third party (a director), in relatively novel circumstances. The outcome was not inevitable. The investigation meeting proved itself necessary in resolving these matters.

[10] Second, although the Authority found some of Mr Anderson's written communications discourteous, the Authority is not satisfied the communications unnecessarily increased costs, warranting an uplift. I would make the point, however, that the Authority expects parties to be polite and constructive in their dealings with the Authority and other parties in oral and written communications.<sup>2</sup> The Authority does not see Mr Anderson's claims about the conduct of Mr Corrigan's representatives as relevant to the issue of costs.

[11] The Authority acknowledges one invoice has been provided for Mr Corrigan indicating costs incurred relating only to preparation for, attendance at, and following the investigation meeting. The invoice totals \$4,447.08, being just shy of the daily tariff. It does not demonstrate costs were incurred prior to that but I infer that they were.

[12] In relation to Mr Corrigan's claim for costs in respect of costs submissions, the Authority does not generally award costs on costs, and I am not satisfied there is sufficient reason to make an exception in this case.

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<sup>2</sup> See Practice Direction of the Employment Relations Authority, issued 1 February 2024.

[13] In exercising my discretion, I have kept in mind the modest approach to costs in the Authority. Having considered the submissions and information received and guided by applicable Authority principles and equity and good conscience, this results in a costs award of \$4,500. Mr Menzies is liable to pay this costs amount, having been the only party who defended the proceedings.

**Outcome**

[14] Levi Menzies must pay \$4,500 in costs to Nathan Corrigan within 14 days of the date of this determination. Mr Corrigan is also entitled to reimbursement of the Authority application fee of \$71.55, which Mr Menzies must pay within the same timeframe.

Sarah Blick  
Member of the Employment Relations Authority