

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 246
3260979

BETWEEN LUKE BOYES
 Applicant

AND LUKE'S MISTAKE LIMITED
 First Respondent

 KEITH WILLIAMS
 Second Respondent

 MARTIN COOKSON
 Third Respondent

Member of Authority: Peter van Keulen

Representatives: Shaun Cottrell, counsel for the Applicant
 Peter Moore, advocate for the Respondents

Investigation Meeting: On the papers

Submissions Received: 28 April 2025 from the Applicant
 14 April 2025 from the Respondents

Date of Determination: 5 May 2025

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 17 March 2025,¹ I found that Luke Boyes was not an employee of any of the respondents and therefore I did not have jurisdiction to investigate his claims against the respondents.

[2] In my determination I reserved costs so that the parties could try to agree costs. The parties have not agreed costs and now the respondents seek costs.

¹ *Boyes v Luke's Mistake Limited and Ors* [2025] NZERA 159.

Application for costs

[3] The respondents seek an award of costs based on the daily tariff for a one-day investigation meeting with an uplift.² The respondents say:

- (a) They were wholly successful in defending Mr Boyes's claim.
- (b) That the second and third respondents were unnecessarily included in the claims.
- (c) This matter took more time than is reflected by a single day of investigation due to additional evidence being called and submission being made in writing after the investigation meeting.
- (d) Mr Boyes's conduct of his claims was unreasonable and unnecessarily increased their costs.

[4] Mr Boyes accepts that costs should be awarded to the respondents and says the award should be calculated by applying the daily tariff with a reduction. Mr Boyes says:

- (a) There is no reason to depart from applying the daily tariff and no reason to increase it, so the starting point is the daily tariff applied for a one-day investigation meeting.
- (b) His financial position, particularly the potential liability he might have for money he received from the first respondent in the course of the business venture with the respondents, justifies a reduction in the daily tariff.

Analysis

Costs in the Authority

[5] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.³

² The normal practice of the Authority when setting costs is to apply a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff. The current daily tariff is \$4,500 for the first day of an investigation meeting and \$3,500 for every subsequent day of an investigation meeting.

Costs follow the event

[6] The presumption with costs is that costs should follow the event; that is the successful party should be awarded costs from the other party. In this case the respondents were successful, and they are entitled to an award of costs.

Applying the daily tariff

[7] There is no reason to depart from the normal daily tariff approach to assessing costs in the Authority; so, I will calculate the award of costs based on the daily tariff.

[8] The investigation meeting for this matter took one day so the starting point for any costs award is \$4,500.

Increasing the daily tariff

[9] I have considered the submission put forward by the advocate for the respondents regarding an increase to the daily tariff. I acknowledge that each of the factors raised on behalf of the respondents provide a credible basis to advance the argument for an increase to the daily tariff insofar as they suggest an increase in work for the respondents.

[10] However, I am not satisfied that the grounds advanced warrant an increase. Yes, there may have been some additional work, but this was reasonably normal work required in an Authority investigation; additional evidence to consider and submissions in writing happen frequently in Authority investigations and must be considered as part of the work covered by the daily tariff.

[11] What is required is additional work that is significant, was unnecessary, and/or was caused by unreasonable conduct of the case by the other side. In this case I am not satisfied that any of these factors applied to a sufficient degree to warrant an increase to the daily tariff.

[12] I will not increase the daily tariff amount.

³ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

Reducing the daily tariff for financial hardship

[13] In *Tomo v Checkmate Precision Cutting Tools Ltd*⁴ Judge Inglis reviewed various cases dealing with reducing any costs award to account for the financial position of the unsuccessful party and the hardship that might otherwise occur to them.

[14] Applying *Tomo* to the exercise of my discretion in terms of setting costs, I am required to consider whether the financial position and subsequent hardship of the unsuccessful party is such that a reduction might be appropriate and then I must balance that against the successful party's interests and rights, and the broader public policy considerations.

[15] In this case I am not satisfied that the financial position of Mr Boyes is such that the imposition of costs at the daily tariff rate would cause such hardship that it weighs against the broader public policy consideration of maintaining consistency and certainty of costs in the Authority and upholding the respondents' rights to receive an award of costs as the successful parties.

[16] I will not reduce the daily tariff amount.

Conclusion

[17] The respondents as the successful parties are entitled to receive an award of costs. The daily tariff should be applied to calculate the quantum of the award without any variation. This means the respondents are entitled to an award of costs of \$4,500.

Order

[18] Luke Boyes is to pay the respondents \$4,500 as a contribution to their costs in this matter.

Peter van Keulen
Member of the Employment Relations Authority

⁴ *Tomo v Checkmate Precision Cutting Tools Ltd* [2015] NZEmpC 2.