

The application for costs

[3] Mr Kalkat's advocate seeks costs in the amount of \$3,000 and disbursements (the \$71.55 Authority filing fee). The investigation meeting took two hours with submissions being provided the day after and legal submissions were timetabled. Easy Recruitment Limited did not participate in the investigation meeting.

Assessment

The Authority's costs approach

[4] The Authority's discretion to award costs is well established and arises from Section 15, of Schedule 2 of the Employment Relations Act 2000.

[5] An issue is whether I should adjust the notional daily rate the Authority normally applies upwards on a submission that Easy Recruitment Limited spurned various reasonable attempts to resolve matters prior to the investigation meeting.

[6] A starting point is that costs normally follow the event and as Mr Kalkat was successful in his personal grievance claim he is entitled to consideration of an award of costs.

Applying the daily rate

[7] As outlined in the substantive determination,² the Authority's approach is to apply a notional daily rate and only adjust this if persuaded that particular circumstances or other factors require an upward or downward movement.³ The discretion, it is accepted, is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*⁴ including costs are not to be used as a punishment or as a reflection on how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.⁵ The current Authority notional daily rate is \$4,500 for the first day of an investigation meeting.

² Ibid at [103].

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

⁴ *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

⁵ Section 160(2) Employment Relations Act 2000.

Assessment

[8] Taking all the factors identified in submissions into account and applying the Authority's discretion I consider that Mr Kalkat is entitled to a cost contribution for the quarter day investigation meeting and the preparation of an additional submission. I fix that amount at \$2,500.

Order

[9] Easy Recruitment Limited is to pay Beau Kalkat a contribution to his costs in the amount of \$2,500 and \$71.55 as reimbursement of the Authority filing fee.

David G Beck
Member of the Employment Relations Authority