

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 87
3251139

BETWEEN

LEESA ROBINSON
Applicant

AND

THE CHIEF EXECUTIVE OF
THE MINISTRY OF SOCIAL
DEVELOPMENT
Respondent

Member of Authority: Claire English

Representatives: No appearance for the Applicant
Hamish Kynaston, counsel for the Respondent

Submissions received: 6 December 2024 from Respondent

Determination: 18 February 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 24 July 2024, the Authority issued a determination in this matter, dismissing the applicant, Ms Robinson's, claims, and awarding a small amount in favour of the respondent (MSD).

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

[3] An extension of time was granted for the filing of costs submissions. I understand that MSD took steps to engage with Ms Robinson, but due to personal circumstances, she was not immediately able to do so. In the absence of agreement, MSD filed an application for an award of costs in its favour. Time has been allowed for Ms Robinson to respond, however, she has not made any contact with the Authority

on this matter. I therefore consider it necessary in the interests of finality to determine the matter.

[4] 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 days¹.

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

[6] The investigation meeting in this matter was for two days, and was held in person. Ms Robinson and representatives for MSD attended, together with witnesses. As will be apparent from what I have written above, Ms Robinson was not successful in her claims, and a small repayment was awarded to MSD.

[7] MSD now seeks an award of costs at the rate of the Authority's usual tariff for a 2-day investigation meeting. It says in support of its position that costs should follow the event, and it was the successful party on all points; its actual costs well exceed the tariff; and it made a Calderbank offer to Ms Robinson prior to the investigation meeting that was not accepted.

[8] Ms Robinson has not made any submissions on her own behalf. However, I am in receipt of brief email correspondence from her to MSD filed in support of the application for an extension of time for filing an application for costs, indicating that she had experienced some personal difficulties. I will not go into detail here as to do so would impact on the privacy of other non-parties.

Principles

[9] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act). Costs are discretionary.

[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)*

¹ For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

*v Da Cruz*² as confirmed in *Fagotti v Acme and Co Limited*³. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one 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 parties conduct.

[11] In this matter, the starting point is that costs follow the event. MSD is the successful party, and is entitled to a contribution to its costs, at the rate of the daily tariff. MSD submits that this is appropriate start and end point.

[12] I have considered whether there should be any change from this starting assumption. The existence of a Calderbank offer might suggest a modest uplift, while Ms Robinson's personal circumstances might suggest a modest reduction. In these circumstances, and in the situation where neither of these outcomes were advocated for by either party, my view is that the published tariff remains the proper outcome, and both parties benefit from the certainty of such an outcome.

Orders

[13] Ms Leesa Moira Robinson is ordered to pay to the Chief Executive of the Ministry of Social Development within 28 days of the date of this determination the sum of \$8,000.00 (inclusive) as a contribution to costs.

Claire English
Member of the Employment Relations Authority

² [2005] 1 ERNZ 808.

³ [2015] NZEmpC 135 at 114.