

investigation meeting.² Mr Sinclair-Walker seeks an uplift to daily tariff as Alert Monitoring did not engage properly in this matter, which he says increased the time spent in preparation for the investigation meeting.³

[4] Alert Monitoring does not oppose costs being awarded to Mr Sinclair-Walker but says this should only be \$320 plus \$71.55 (being the lodgement fee):

(a) Mr Sinclair-Walker's actual costs show that he was charged only one hour at the rate of \$320, for representation at the investigation meeting

(b) The non-attendance at the investigation meeting was due to health issues for the General Manager of the security business.

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.⁴

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 Mr Sinclair-Walker was successful, and he is entitled to an award of costs.

Applying the daily tariff

[7] With this employment relationship problem, there is no reason to depart from applying the normal daily tariff approach to assessing costs in the Authority.

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.

³ Alert Monitoring did not lodge a statement in reply and despite advising that it would participate in the investigation meeting it did not lodge and serve any witness evidence nor did it attend the investigation meeting.

⁴ For further information about the factors considered in assessing costs, see:

www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

[8] The investigation meeting for this matter took less than half a day to complete. I accept the submission by Mr Sinclair-Walker's advocate that there was additional time spent preparing due to the respondent failing to properly engage. Based on this I set the starting point for assessing costs at a half day, being \$2,250.

Increasing the daily tariff

[9] As the additional work undertaken by Mr Sinclair-Walker's advocate is accounted for in setting the daily tariff at a half day there is no reason to increase the amount from that point.

Reducing the daily tariff

[10] I am not satisfied that the daily tariff should be reduced based on Alert Monitoring's submissions.

Conclusion

[11] Mr Sinclair-Walker was successful with his employment relationship problem and he is entitled to receive an award of costs. The daily tariff should be applied to calculate the quantum of the award based on a half day for the investigation meeting. This means Mr Sinclair-Walker is entitled to an award of costs of \$2,250 as well as an additional \$71.55 for the lodgement fee.

Order

[12] Alert Monitoring is to pay Mr Sinclair-Walker \$2,250 plus \$71.55 as a contribution to his costs in this matter.

Peter van Keulen
Member of the Employment Relations Authority