

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA
TAIMAHI ŌTAUTAHI ROHE**

[2024] NZERA 661
3248039

BETWEEN ANDY ADAMS
 Applicant

AND ROBINSON FREIGHT
 LIMITED
 Respondent

Member of Authority: Antoinette Baker

Representatives: Evie Hope, counsel, for the Applicant
 Nathan Robinson, for the Respondent

Submissions received: 29 October 2024 from the Applicant
 31 October 2024 for the Respondent

Date of Determination: 7 November 2024

COSTS DETERMINATION OF THE AUTHORITY

Costs

[1] Mr Adams has applied for a contribution to his costs from the Respondent (RF).

[2] I heard this matter across part of a day on 12 September 2024. In my subsequent determination¹ I awarded Mr Adams \$4,000.00 gross for an unpaid contractual notice period; and \$7,000.00 compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act) for the effect on Mr Adams of an unjustified dismissal. I did not find that any penalties claimed were to be awarded and noted the less than admirable behaviour of Mr Adams in his admitted removal of parts from RF's truck and retention of its cell phone when he collected his gear after the employment ended. I reserved costs and in response to a later lodged application from Mr Adams, granted leave for

¹ *Adams v Robinson Freight Limited* [2024] NZERA 606.

Mr Adams to bring a further application against Mr Nathan Robinson, sole director of RF, to the Authority under s142Y of the Act.²

[3] Clause 15 of Schedule 2 of the Act empowers the Authority to order costs to any party as the Authority thinks reasonable. A party should receive a reasonable contribution to costs incurred in achieving a successful result. Costs are discretionary, modest, and are not a mechanism to punish the other party. Some cases may require costs to lie where they fall.³

[4] The Authority uses a notional daily tariff⁴ as the starting point for assessing costs. The tariff is based on the length of the investigation meeting held in each matter and takes into account preparation. This tariff may then be adjusted upwards or downwards according to the circumstances of each case considering things like a liable party's means to pay costs, additional preparation required if a case is complex, and any conduct of a party that has unnecessarily increased costs.

[5] For RF it is submitted that I award \$3,375.00 as a contribution to Mr Adams's costs based on a straightforward matter heard across '3/4' of a day, finishing on 12 September 2024 at 2.00pm.

[6] On 31 October 2024 Mr Robinson sent an email to the Authority, copied to counsel for Mr Adams, which has been treated as his opportunity to comment on costs in response. That email contained expletives towards Mr Adams and counsel for Mr Adams. He refers to not having money to pay and having already said this. He refers disparagingly to Mr Adams and says he will spread the situation 'all over social media'. Despite Mr Robinson's less than helpful way he has chosen to respond to the costs application I accept as I did in the substantive determination that RF is carrying a notice to remove from the register⁵ and there is a single bank account (provided by Mr Robinson) showing a \$20,000.00 over draft at a past point in time, albeit a bank account without reference to current company accounts or assets. In short as was the case in the

² As above at paragraphs [59] to [64].

³ Employment Relations Act 2000, Schedule 2, clause 15 and *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme and Co Limited* [2015] NZEmpC 135 at 106-108.

⁴ The current tariff applied for a one-day Authority investigation meeting is \$4,500.00 for the first day and \$3,500.00 for each additional day.

⁵ <https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/8056378>

substantive determination Mr Robinson or someone for RF has never taken the opportunity provided to give me more information beyond this to support RF's inability to pay an award of costs.

[7] Standing back and considering the above, I find an appropriate award is the \$3,375.00 proposed by Mr Adams.

Order

[8] Robinson Freight Limited is ordered to pay Andy Adams the single sum of \$3,375.00 as a contribution to his costs.

Antoinette Baker
Member of the Employment Relations Authority