

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKARAU ROHE**

[2022] NZERA 274  
3108052

BETWEEN                      ANDREJUS ALFIOROVAS  
Applicant

AND                              ANNEX GROUP LIMITED  
Respondent

Member of Authority:        Helen Doyle

Representatives:             Allan Halse, advocate for the Applicant  
Tom Jarman, counsel for the Respondent

Submissions Received:      27 May 2022 from the Applicant  
10 June 2022 from the Respondent

Date of Determination:      27 June 2022

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In a determination dated 9 May 2022 the Authority found that the applicant was an employee and not a volunteer. Payment of wages of \$6,875 gross was ordered. Grievances of unjustified disadvantage and dismissal were made out. There were awards of \$16,434 for lost wages and \$18,000 for compensation.<sup>1</sup>

[2]     Costs were reserved and a timetable set for an exchange of submissions.

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<sup>1</sup> *Andrejus Alfiorovas v Annex Group Limited* [2022] NZERA 190.

[3] Cost submissions have now been received from both parties. The Authority granted an extension of four days to Mr Halse to lodge submissions because of staff illness resulting in the timetable being overlooked

### **The applicant's submissions**

[4] Mr Halse submits an award of costs of \$10,883.12 (GST inclusive) is appropriate. He submits that there should be an increase to the daily tariff because of a Calderbank offer to settle for \$15,000 compensation together with costs of \$6,250 plus GST.

### **The respondent's submissions**

[5] Mr Jarman on behalf of the respondent, says that the costs sought are excessive and that the applicant's offer to settle was open for acceptance for less than three working days before the investigation meeting on 10 February 2022. He says that the meeting lasted one half day.

[6] He submits that the respondent did not have adequate time to reflect, consider and seek advice on the offer and was not legally represented. Further, that the offer failed to outline the consequences if it was rejected.

[7] Mr Jarman submits there should be no order for costs or alternatively if there is an order, an uplift is not warranted, and the daily tariff should be halved considering the half day investigation.

### **Discussion and analysis**

[8] Under Schedule 2, clause 15 of the Employment Relations Act 2000 (the Act) the Authority has power to award costs.

[9] The full Court of the Employment Court in *PBO Limited (Formerly Rush Security Limited) v Da Cruz* stated that the Authority can set its own procedure and has since its inception held to some basic tenets when considering costs.<sup>2</sup> These include a discretion as to whether costs are awarded and if so what amount. That discretion however is to be exercised in accordance with principle and not arbitrarily, and equity and good conscience can be considered

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<sup>2</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44].

on a case-by-case basis. Costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct, although conduct which increases costs unnecessarily can be considered in inflating or reducing an award. Costs generally follow the event and without prejudice offers (save as to costs) can be considered. Awards are modest and frequently judged against a notional daily rate.

[10] The applicant was the successful party and there is no good reason to depart from the usual principle that costs should follow the event.

[11] I have recorded in my minute book that the meeting commenced at 9.30 am and concluded at 3.50 pm. On that basis it is appropriate to consider a starting point for costs in accordance with the daily tariff of \$4,500.

[12] I have considered whether there is good reason to consider an uplift to that tariff.

[13] I have concluded there is not for the following reasons:

- (a) The offer was made at a very late time in the proceeding when preparation had already been completed.
- (b) There was limited time between 7 and 10 February 2022 for the respondent to consider and reflect on the offer. 7 February 2022 was a public holiday.
- (c) The respondent was not legally represented at the time of the offer and had limited time to seek advice.
- (d) The applicant was considerably better off financially than he would have been if his offer had been accepted.

**Order made**

[14] I order Annex Group Limited to pay to Andrejus Alfiorovas the sum of \$4,500 in costs and reimbursement of the sum of \$71.56 being the filing fee.

**Helen Doyle**  
**Member of the Employment Relations Authority**