



**The facts**

[4] An investigation meeting was held over one and a half days. The parties reached agreement for an audit review when the applicant agreed to submit claims and counter claims on expenses to an independent person. Written submissions were received from both parties after the investigation meeting.

**Determination**

[5] I was surprised when the parties agreed to an independent audit of expenses, when I had partially covered the matters in the first day of my investigation. My determination reserved any further issues and enforcement of that matter.

[6] Their agreement to refer their claims and counter claims to an independent audit and to share the costs equally will remain a separate matter. If there is any question that the applicant has not met his portion of the costs then the enforcement of the agreement remains at large and can be pursued by the respondent on notice and with the provision of the appropriate details of the actual costs or estimates. The respondent is entitled to expect Mr Cameron will honour the bargain and that that matter will be dealt with quickly as there was an agreement to dispose of it.

[7] Mr Cameron should have agreed to such an audit much earlier as it had been offered by the respondent as a way through a complex set of details, figures and information. In this regard the parties had attended mediation provided by the Department of Labour and they had plenty of lead in time before reaching agreement during the Authority's investigation. Mr Cameron's lateness in agreeing to the audit has caused extra time and costs for the respondent where a portion of that matter had to be investigated by me, and then had to be put aside. I will weigh that expense in the total time for the investigation meeting and attendances of counsel for the respondent.

[8] Both parties have referred to the merits or otherwise of the matters associated with the substantive issues. The parties' conduct in their relationship on those matters is not a matter relevant to costs because they were dealt with in the earlier determination released by me. It is not appropriate to assess these further and relate

costs with those issues because the issues were genuinely raised for a determination. However the conduct of the parties during the investigation is of some relevance, although costs are not punitive but to compensate the party that has been put to the expense and cost of the Authority's investigation.

[9] There have been costs incurred by the respondent for preparation and attendances at the investigation meeting and providing written submissions, including the details and information on the expenses claims. The nature of Mr Cameron's claims made it entirely reasonable for the respondent to get professional help and to be assisted during the investigation meeting. Mr Cameron withdrew some claims, (shortfall in wages, expenses not reimbursed, business expenses not reimbursed and medical expenses), during the Authority's investigation meeting. These should have been withdrawn earlier and before the respondent incurred more costs preparing for them. Given the paucity of evidence on them they were going to be difficult for Mr Cameron to prove. Thus, he has put the respondent to unnecessary costs of those claims.

[10] Reasonable costs come within the range of the tariff applied by the Authority, and a useful starting point is \$3,000 per investigation meeting day for the cost of preparation and attendances. The nature of the claims meant that the respondent was left with many matters to cover off, which has to be off set with its own counter claim for expenses. Therefore, while more costs than usual have been incurred by the respondent due to preparation, the provision of documents and submissions, it is my assessment that \$6,000 is reasonable for a contribution to costs given the investigation meeting lasted one and a half days.

### **Conclusion**

[11] I order Scott Cameron to pay Axo Shredders Limited \$6,000 contribution to costs reasonably incurred for the Authority's investigation.

[12] I reserve leave for any further issue for determination and enforcement on the agreement for the audit costs and the outstanding expenses issue.

P R Stapp  
Member of the Employment Relations Authority