

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 137
3116674

BETWEEN	HANNAH FLAVELL Applicant
AND	WALTER GRANT BULLOCK AND DIANNE HOWARD Respondents

Member of Authority: Leon Robinson

Representatives: Alex Kersjes, advocate for the Applicant
No appearance by Respondents

Submissions received: 18 March 2022 from the Applicant
Nil from the Respondent

Determination: 8 April 2022

COSTS DETERMINATION OF THE AUTHORITY

Application for costs

[1] Hanna Flavell (Ms Flavell) succeeded in her application to the Authority to resolve her personal grievance that she had been unjustifiably constructively dismissed. She was granted formal orders for reimbursement and compensation to resolve the personal grievance. She now makes application that following that event, she ought to have an award of costs in her favour.

The Authority's approach

[2] Clause 15 of the 2nd Schedule to the Employment Relations Act 2000 gives the Authority a wide discretion to order a party to pay another party's costs and disbursements as the Authority thinks reasonable.

[3] The principles for assessing and awarding costs in the Authority are so well established that there is no need to set out all of these factors here, see *PBO Ltd (formerly Rush Security Ltd) v D Cruz*¹.

[4] The Authority applies a 'notional daily tariff' based approach to assessing costs. The current notional daily tariff is \$4,500.00 for the first day of an investigation meeting and \$3,500.00 for each subsequent day.

[5] That approach gives the Authority a notional starting tariff, which must then be adjusted to reflect the particular circumstances of each case. There is therefore no need to adopt any other costs regime as the Authority can adjust the notional daily tariff, on a principled basis, as required.

[6] The Authority's notional daily tariff based approach is widely understood by those appearing in the employment institutions. The notional daily tariff basis approach to costs reflects the Authority's unique investigatory and problem solving role.

[7] The 'notional daily tariff' is the approach that has been used for assessing costs in this matter.

The reasoning

[8] In its determination dated 8 March 2022 the Authority reserved the question of costs but encouraged the parties to agree the matter between them. In the event that the matter could not be agreed, Ms Flavell was permitted 14 days in which to submit an application and the Respondents a further 14 days thereafter to respond. Ms Flavell duly lodged her application on 18 March 2022. The Respondents did not respond and Ms Flavell's application for costs is unchallenged.

[9] I am satisfied that it is appropriate that Ms Flavell be granted an order that Walter Grant Bullock and Dianne Howard make a contribution to her costs. The Authority's investigation meeting proceeded in the absence of the Respondents - there being no good cause shown why they had failed to attend. The investigation meeting proceeded over one-half day. Ms Flavell's costs are advised to be \$4,151.94 together with disbursements in the sum of \$212.56.

¹ [2005] 1 ERNZ 808.

[10] Mr Hogan shall have half the usual day one tariff payment of \$4,500.00 in the amount of \$2,250.00 (Two thousand two hundred and fifty dollars).

The result

[11] Accordingly, I order Walter Grant Bullock and Dianne Howard to pay to Hannah Flavell the sum of \$2,250.00 (Two thousand two hundred and fifty dollars).

Leon Robinson
Member of the Employment Relations Authority