

a fair starting point for costs on a daily tariff basis is \$3,000. That is the sum that Mr Martin seeks as a contribution to the applicant's costs.

The respondent's submissions

[4] Mr Marchant submits that the meeting was not extraordinary and there were no complicated unusual features associated with it. He referred to the acknowledgement by Mr Martin that the way the matter was handled by the respondent, or its advisers, did not cause unnecessary costs to the applicant. Mr Marchant submits that the applicant's claims were inflated and that the possible award was substantially less than the legal costs incurred and that in all the circumstances costs should lie where they fall.

Determination

[5] There is no reason in this case to depart from the usual principle that costs follow the event, or, in other words, that the successful party is entitled to a contribution towards his costs.

[6] There was nothing particularly complicated or unusual about the investigation meeting and that the respondent did nothing to cause unnecessary additional costs to the applicant.

[7] I accept that \$3,000 is now regarded as a fair amount for a daily tariff. I apply the principles that were stated to be appropriate to the Authority in the exercise of its discretion as to costs as set out in the leading Employment Court judgment of *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] ERNZ 808.

[8] The hearing time was a little longer than stated by Mr Marchant in his submissions. I have recorded in my minute book that the investigation meeting commenced at 10.10am and continued through to 3.37pm with a luncheon adjournment. I consider that the time taken to investigate this matter was such that it is fair to take the meeting as a full day.

[9] Mr Marchant correctly submits that the claim by the applicant for time stood down was not successful, although that was not the main claim.

[10] I am of the view that the starting point for exercising my discretion as to costs on a daily tariff basis should be \$3,000. Although the applicant was not awarded the

full amount he claimed, I do not consider there should be an adjustment in terms of that as that did not impact significantly on the time taken to investigate the matter. I do make a slight adjustment downwards for the unsuccessful claim for time stood down of \$300.

[11] In exercising my discretion as to costs I am of the view that a fair and reasonable award would be the sum of \$2,700.

[12] Mr Martin wanted me to record that the parties had not at the time costs submissions were provided resolved the question of wages. Leave is still reserved for either party to return to the Authority if necessary to obtain an order with respect to wages.

[13] I order Canstaff Limited and Canstaff Ashburton Limited to pay to Gregory Miles Fulton the sum of \$2,700 being costs.

Helen Doyle
Member of the Employment Relations Authority