



[4] He submits that without the requested award, the value of his remedies will be substantially reduced. He also submits that his financial circumstances are straitened by his unjust dismissal and subsequent struggle to find another job but that the Respondent has the means to pay the proposed proportion of his costs.

[5] The Respondent submits costs should be determined within the range of the usual daily 'tariff' routinely applied by the Authority under the principles discussed in *PBO Limited v Da Cruz* [2005] 1 ERNZ 808.

[6] It objects to the Applicant's submissions regarding his financial position and job search when the Authority determination found that he had not adequately mitigated his loss.

[7] It submits that \$1000 is the appropriate modest award of costs due to the Applicant.

## **Discussion**

[8] A tariff-based approach is to be applied flexibly to the circumstances of the case on the principles discussed in *Da Cruz*.

[9] In this particular case involving a full day investigation meeting with questioning of four witnesses and oral closing submissions from the representatives I take \$2500 as the starting point for costs. Any factors requiring adjustment up or down from that point are then considered.

[10] The Applicant was successful in establishing his substantive personal grievance claim. Costs follow that event.

[11] There is nothing indicating that any of the Applicant's costs were unnecessarily or unreasonably incurred. There is no information suggesting there are any 'without prejudice (save as to costs)' settlement offers that need to be taken into account.

[12] Contrary to the one submission by the Respondent, no deduction in costs should be made for the Applicant's level of contribution. That has already been applied to the level of remedies awarded and is not to be double counted.

[13] Neither do I accept the Applicant's submission that costs should awarded to him above the usual, modest level because of the effect there would otherwise be on the overall 'nett' benefit from the remedies awarded to him. The Court in *Da Cruz* (at [47]) cautioned representatives about the need to be conscious of the potential effect of accumulating costs on the value of remedies eventually awarded. It is a matter for representatives to address with the parties rather than to be compensated for in costs awards.

[14] For the reasons given I consider there are no factors sufficiently strong to persuade me to lift or lower the starting point for costs in this particular case from the earlier-identified amount.

### **Determination**

[15] The Respondent is to pay \$2500 to the Applicant as a reasonable contribution to his costs and \$70 in reimbursement of his lodgement fee. These sums are to be paid within 28 days of the date of this determination.

Robin Arthur  
Member of the Employment Relations Authority