

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2023] NZERA 476  
3176987

BETWEEN LINDSEY ANN GRIFFITHS  
Applicant

AND BOOST PROMOTIONS  
LIMITED  
Respondent

Member of Authority: Claire English

Representatives: Johanna Drayton and Annah Casey-Solly, counsel for  
the Applicant  
Bridget Smith, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 4 July 2023 from Applicant  
20 July 2023 from Respondent

Determination: 24 August 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Substantive Determination**

[1] On 26 May 2023, the Authority issued a preliminary determination in this matter, finding that Ms Lindsey Griffiths was an employee of Boost Promotions Limited (Boost) between 1 January and 31 March 2022. Ms Griffiths' substantive claims against Boost are still to be heard.

[2] The parties were encouraged to resolve any issue of costs between them, and the Authority made reference to its usual practice of applying the daily tariff to determine costs.

[3] The parties have not been able to resolve costs between themselves and have filed memoranda accordingly.

[4] Ms Griffiths seeks to recover her full costs of more than \$36,000, on the grounds that Boost delayed providing relevant documents, which prolonged the investigation meeting.

[5] Boost resists this claim. It says instead that Ms Griffiths increased the necessary length of the investigation meeting by calling irrelevant witnesses, and that actual costs sought by Ms Griffiths are neither reasonable nor proportionate in all the circumstances.

### **Principles**

[6] The power of the Authority to award costs is contained in clause 15 of schedule 2 of the Employment Relations Act 2000 (the Act).

[7] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*<sup>1</sup> as confirmed in *Fagotti v Acme and Co Limited*.<sup>2</sup> The principle set out in the above cases is that costs are to be modest, not to be used as a punishment, and that costs usually follow the event.

[8] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.<sup>3</sup> The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

### **Analysis**

[9] The Investigation meeting in this matter was for two days, and was held in person. Both parties attended together with their respective counsel, together with witnesses.

[10] Ms Griffiths was the successful party, as she succeeded in establishing her claim that she was an employee of Boost. Costs therefore follow this event.

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<sup>1</sup> [2005] 1 ERNZ 808.

<sup>2</sup> [2015] NZEmpC 135 at 114.

<sup>3</sup> For further information about the factors considered in assessing costs, see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)

[11] However, I do not accept that there is any entitlement to actual costs. The Authority's practice note refers to a contribution to costs, and that the daily tariff is the starting point.

[12] In short, both sides submit in support of their position that there was conduct by the other that contributed to the investigation meeting being prolonged. Although two days were required for the hearing of this preliminary matter, my view is that this time was necessary in light of the issues brought to the table by both parties.

[13] I also note that the investigation meeting itself ran smoothly, and there was no conduct by the participants during the hearing that would suggest that the daily tariff would need to be adjusted.

[14] I find that there is nothing that would merit an award of actual costs. The daily tariff is the correct starting point. Given that this was a two-day investigation meeting, the starting point is therefore \$4,500 for the first day, and \$3,500 for the second day. Ms Griffiths is entitled to costs in accordance with the usual tariff, and orders are made accordingly.

### **Disbursements**

[15] Ms Griffiths has also claimed for disbursements, being the filing fee of \$71.56. The amount claimed is actual and reasonable, and Ms Griffiths is entitled to recovery of this cost.

### **Orders**

[16] I order Boost Promotions Limited to pay to Ms Griffiths the sum of \$8,000.00 as a contribution to costs, and the sum of \$71.56 as disbursements, within 28 days of the date of this determination.

Claire English  
Member of the Employment Relations Authority