

Mrs Dimery and of Mr and Mrs Martin has been claimed for a total of 55 hours, amounting to a total of \$6,875.

[5] In a later submission SCI claimed a further \$10,000 as compensation for the hurt and humiliation caused to Mr and Mrs Martin through the bringing of the grievance and its resolution by investigation and determination.

[6] On behalf of Ms Gurnell the submission made was that the claim for costs is unreasonable and that costs should lie where they rest.

[7] In this case I cannot accept the submission that Ms Gurnell had simply availed herself of the statutory procedure available to all employees to resolve employment relationship problems and that she should not be penalised for doing so. It seems to me that if she had followed through with her disadvantage grievances as raised before considering resignation from the employment, she may have reached a better outcome entirely. The multiplicity of claims made in support of her grievances also tended to obscure the basic circumstances at source that gave rise to the problems.

[8] I must conclude that SCI was unnecessarily put to legal expense in preparing for and participating in the Authority's investigation. For this it is entitled to be reasonably compensated. When considering the appropriate amount to award I have had regard to the judgment of the Employment Court in *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808 and to the principles set out in that decision with regard to awards of costs for Authority investigations.

[9] I note in particular the approval given by the Full Court to the use of a notional daily rate as one means of fixing costs or of cross-checking them by reference to time taken for the investigation. When the Court issued that decision over two years ago, research had shown that the majority of costs awards for a one day investigation meeting were in the range of \$2,000 to \$2,500.

[10] The investigation in this case took less than two days.

[11] The claim for legal costs of \$9,563 includes amounts invoiced in relation to mediation to a total of nearly \$2,000. Those amounts cannot be considered for inclusion in an award for costs.

[12] I consider that a reasonable contribution to legal costs should be assessed on the basis of a hearing time of 1½ days. Using a daily rate of \$2,500 the award I assess as appropriate is \$3,750.

[13] I reject the balance of the costs claimed of \$16,875 for executive time and distress compensation as being outside the scope of an award for costs.

[14] Ms Gurnell is therefore ordered to pay \$3,750 to SCI as a reasonable contribution to actual legal costs. The order is made pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

A Dumbleton
Member of the Employment Relations Authority