

- (i) Mr Ip has not lodged any evidence as to costs actually incurred so the sum of \$3000 claimed is not substantiated;
- (ii) Mr Ip's earlier written closing submissions had sought costs of \$2000; and
- (iii) The Club made an offer to settle the grievance on a "*without prejudice save as to costs*" basis prior to the Authority's investigation meeting.

[4] In exercising the discretion to award costs the Authority applies relevant principles and may set costs according to a notional daily rate adjusted up or down to take account of factors in the particular circumstances of the case: *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808.

[5] Generally costs follow the event, which in this case was Mr Ip establishing he had a personal grievance. He is entitled to an award of costs.

[6] The notional daily rate is currently around \$3000 for a relatively straight forward personal grievance of this type. As the investigation meeting in this case – at which three witnesses were questioned – ended in the early afternoon, I take two-thirds of the notional daily rate as the appropriate starting point.

[7] I accept the Club's submission that Mr Ip has not established what costs he actually incurred. Although a notional daily rate may be applied, the Authority nevertheless expects reliable information about the successful party's actual costs as any award should still be no more than a modest and reasonable contribution to reasonably incurred costs. For that reason I decline Mr Ip's application for \$3000 costs which are, inexplicably, \$1000 more than sought in closing submissions lodged by his representative a week after the investigation meeting.

[8] I would accept \$2000 as an amount for reasonably incurred costs in this case involving preparation of the statement of problem, a single witness statement (from Mr Ip), participation in the Authority investigation meeting lasting less than a full day, and lodging a three-and-a-half page written closing submission. I note this did not include preparing a bundle of agreed documents for the investigation meeting – a task which the Club's representatives helpfully undertook.

[9] I do not take account of the Club's settlement offer – now disclosed in its cost submissions – because the amount offered then was less than Mr Ip was eventually awarded in the Authority's determination.

[10] **Taking all these factors into account the Club is ordered to pay \$1500 to Mr Ip as a contribution to his costs and to pay a further \$70 in reimbursement of his filing fee.**

Robin Arthur
Member of the Employment Relations Authority