

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 658
3152125

BETWEEN JPK
 Applicant

AND IDX
 Respondent

Member of Authority: Peter van Keulen

Representatives: Louise Laming, counsel for Applicant
 Rachel Nightingale, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 28 November 2022 from the Applicant
 14 November 2022 from the Respondent

Date of Determination: 12 December 2022

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 3 November 2022, I dismissed JPK’s claim against IDX.¹ In that determination I reserved costs so that the parties could try to agree costs. The parties were unable to agree and now IDX seeks costs.

Application for costs

[2] Counsel for IDX seeks an award of costs of \$4,500.00. Counsel seeks this amount, based on applying the daily tariff for a one-day investigation meeting.

¹ *JPK v IDX* [2022] NZERA 571.

[3] Counsel for JPK says that JPK accepts he may be liable to pay a contribution to IDX's costs. However, counsel says that should be based on the daily tariff applying to a half day investigation meeting and then a reduction for IDX's current financial circumstances.

Analysis

Costs in the Authority

[4] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000.²

Costs for IDX

[5] The starting point is that costs should follow the event. In this case as IDX was successful in defending JPK's claims it is entitled to an award of cost.

Applying the daily tariff

[6] The next question is whether I should follow the normal practice of the Authority when setting costs, which is applying a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff. The current daily tariff is \$4,500.00 for the first day of an investigation meeting.

[7] There is no reason to depart from this normal practice in this case so I will apply the daily tariff.

[8] The investigation meeting lasted one half day and therefore the starting point is \$2,250.00.

Adjusting the daily tariff

[9] The next question is whether I should adjust the daily tariff to award more or less for the half day of the investigation meeting. The relevant consideration here is JPK's financial circumstances.

² For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

[10] Counsel for JPK submits he has significant outgoings and there will be significant financial stress imposed on him by any order for costs being made. On this basis counsel submits that a reduction in the daily tariff is appropriate and she also seeks an order that payments on any amount ordered be made over time.

[11] Counsel for IDX says, in relation to JPK's financial situations:

- (a) He was aware of his own financial constraints when he commenced this claim and chose to proceed notwithstanding his financial state.
- (b) That JPK might incur additional financial hardship on any cost order is not a decisive factor in assessing costs as the broader public policy considerations must be taken into account.
- (c) The daily tariff will only cover a small amount of the actual costs IDX incurred.

[12] Reducing costs because of a party's impecuniosity should not be applied without some balance. As counsel for IDX states the principles of equity and good conscience must also account for the countervailing interests of the successful party and broader public policy considerations.³ I accept a reduction is appropriate however a total reduction or even significant reduction is not appropriate. JPK must pay something toward IDX's costs notwithstanding his financial position.

[13] In the circumstances I will apply a reasonable reduction to the daily tariff. I consider a reduction of \$750.00 to be appropriate.

Conclusion

[14] As set out above, applying the daily tariff to this matter the starting point for a costs award is \$2,250.00. This sum is then decreased by \$750.00 for JPK's financial situation. So, JPK must pay \$1,500.00 as a contribution to IDX's costs.

³ *Koia v Attorney-General in Respect of the Chief Executive of the Ministry of Justice (No 2)* [2004] 2 ERNZ 274; *Merchant v Chief Executive of the Department of Corrections* [2009] ERNZ 108 (EmpC); and *Tomo v Checkmate Precision Cutting Tools Ltd* [2015] NZEmpC 2.

Order

[15] JPK is to pay IDX \$1,500.00 as a contribution to its costs in this matter. I make no additional orders about a timeframe for total payment or instalments over time at this stage. I leave it to the parties in the first instance to negotiate a payment plan and if that fails then they can come back to the Authority for assistance with setting payments, by way of a variation to my order.

Peter van Keulen
Member of the Employment Relations Authority