

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 178
3153541

BETWEEN	GUY JACOBSON Applicant
AND	NICOLE LISA AHERN First Respondent
AND	EGN LIMITED Second Respondent

Member of Authority: Andrew Gane

Representatives: David Fleming, counsel for the Applicant
Ginrik Credo, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and other: 8 November 2023
material received:

Determination: 27 March 2024

COSTS DETERMINATION OF THE AUTHORITY

Background

[1] In my determination dated 6 December 2023, I found Guy Jacobson was owed compensation, wage arrears and holiday pay from EGN Limited (EGN). I did not find that Nicole Ahern was a person involved in a breach of minimum standards.¹

[2] In my determination I also reserved costs and encouraged the parties to resolve any issues of costs between themselves.

¹ *Jacobson v Ahern & Anor* [2023] NZERA 629.

[3] The parties have been unable to resolve costs.

[4] Mr Jacobson seeks an order for costs against EGN, but not against Ms Ahern. Mr Jacobson seeks payment of \$11,212.50 in costs and disbursements.

[5] Mr Jacobson's application for costs was served on EGN, but it has not responded.

The Authority's investigation

[6] This matter was determined on the papers without holding an investigation meeting.² This determination has been issued outside the timeframe set out in s 174C(3)(b) of the Employment Relations Act 2000 in circumstances the Chief of the Authority has decided, as he is permitted by s 174C(4) of the Act to do, are exceptional.

Legal Aid

[7] Mr Jacobson is legally aided.

[8] Mr Jacobson submits that although legal aid costs are not directly invoiced to him, they should be recognised as costs incurred by him, as he will be required to repay the amount of legal aid grant out of any money's recovered from EGN.

[9] Mr Jacobson's request for costs of \$11,212.50 is based on the amount invoiced to legal aid, the cost of previous representation not covered by legal aid, and an uplift of costs for EGN's alleged conduct of proceedings.

Costs in the Authority

[10] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Employment Relations Act 2000. The principles and the approach adopted by the Authority in which an award of costs is made are settled.

Costs follow the event

[11] The usual principle for costs is that a successful party is entitled to a contribution towards their representation costs and I find there is no reason to depart from that.

² Employment Relations Act 2000, s175D.

Application of the daily tariff

[12] 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 \$4,500.00 for the first day of hearing, and \$3,500.00 for subsequent hearing days.³

[13] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[14] Mr Jacobson has submitted that the total amount to be invoiced to Legal Aid Services, including the cost application is \$10,528.70 inclusive of GST.

[15] The investigation meeting in this matter was for two and a half days. The costs based on the tariff would be \$9,750 (\$4500 for the first day, and \$3500 for each day thereafter). The costs claimed by Mr Jacobson are above the daily tariff.

[16] In the circumstances of this case, I find no good reason to depart from using the daily tariff.

Uplift

[17] Mr Jacobson has sought an uplift on tariff costs of 15% in respect of EGN's alleged conduct of proceedings. However, over the course of the proceedings there were a number of delays by the parties for various reasons, some resulting in the vacating of investigation meeting dates. In the circumstances I decline to grant an uplift of costs in this case.

Previous representation

[18] Mr Jacobson also seeks cost and disbursements for his previous representative, which were not covered by legal aid as the former representative was not a legal aid provider. I find these are costs that incurred by Mr Jacobson prior to the hearing and should be covered by the daily tariff. There is no reason to depart from using the daily tariff and that, therefore is the basis of the award of costs.

³ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1 .

Conclusion

[19] Mr Jacobson was the successful party and is entitled to an award of costs of \$9,750 and is also entitled to payment for the lodgement fee of \$71.56.

Order

[20] EGN Limited is to pay Mr Jacobson \$9,750 as a contribution to his costs in this matter and disbursements of \$71.56.

Andrew Gane
Member of the Employment Relations Authority