

had not answered the representative's correspondence to him about costs. Mr Jamal sought an order for costs set at the Authority's usual daily tariff of \$4,500 for a one-day investigation meeting. His representative had invoiced him for the sum of \$4,906.23 plus GST for the costs of providing representation in the Authority.

[3] Mr Ifraz was sent a copy of Mr Jamal's cost memorandum and advised of the 14-day timeframe to lodge a reply. AAIL did not lodge a memorandum in reply or otherwise respond to the Authority.

[4] Mr Ifraz did copy the Authority in on an email he sent to Mr Jamal's representative asking her not to send him any more correspondence. His message also referred to seeking legal advice and the right to "appeal".

[5] Even if AAIL has filed a challenge to the Authority's determination in the Employment Court, the Authority would usually go ahead and determine costs for its investigation so both the substantive and costs determinations may be considered by the Court if it were appropriate to do so. There was no apparent reason not to follow that practice in this case.

Factors in assessing costs

[6] The Authority applies well-established tenets in exercising its jurisdiction to order a party to contribute to costs incurred by another party.²

[7] Those tenets recognise that a successful party should receive a contribution to its reasonably incurred costs and expenses; costs should generally be modest and may not be used to punish an unsuccessful party; the nature of the case may allow for an order that costs lie where they fall; and the Authority may use a notional 'daily rate' or 'tariff' as a starting point to assess costs.

[8] Undue rigidity in applying that tariff is avoided by upward or downward adjustments appropriate to the particular case. Those adjustments may take account of settlement offers made by either party, the financial means of a liable party to pay costs, the preparation required in particularly complex matters and whether conduct of any party unnecessarily increased the costs they incurred.

² Employment Relations Act 2000, Schedule 2, clause 15 and www.era.govt.nz/determinations/awarding-costs-remedies

Assessment

[9] This was a suitable case for award at the daily tariff. There was no information available to the Authority suggesting any upward or downward adjustment was appropriate. Accordingly, AIL is ordered to pay Mr Jamal costs of \$4,500 and to reimburse him for the fee of \$71.56 paid to lodge his application in the Authority. AIL must pay the costs and reimbursement to Mr Jamal within 28 days of the date of this determination.

Robin Arthur
Member of the Employment Relations Authority