

Costs principles

[3] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.²

[4] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that Calderbank offers may be taken into account, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.³

[5] The daily tariff is usually taken as a starting point,⁴ although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

[6] Ms Jenkins was represented by counsel from the Manawatū Community Law Centre. She seeks a contribution of \$2,700 towards her costs, calculated based on time worked on her file. Counsel referred to the decision of the Employment Court in *Innovative Landscapes (2015) v Celia Popkin*⁵ in support of its submission that an order for costs should be made notwithstanding Ms Jenkins has not actually incurred legal fees.

[7] Whilst the decision in *Popkin* concerned the application of the Employment Courts discretion, I find the reasoning no less applicable to the discretion to be exercised by the Authority. That position is also consistent with the approach taken by the Authority⁶ in relation to the same employment relationship problem that was subject to de novo challenge in *Popkin*. I find that making a costs order is consistent with the Authority's broad discretion informed by the underlying purposes and objectives of the statutory scheme.⁷

[8] I consider that an award of costs in the amount of \$1,500 is appropriate in the circumstances. To that, I add reimbursement of the filing fee.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

⁴ Employment Relations Authority Practice Direction, August 2023, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>

⁵ [2020] NZEmpC 96.

⁶ *Popkin v Innovative Landscapes (2015) Limited* [2020] NZERA 374.

⁷ [2020] NZEmpC 96 at [21].

Orders

[9] I order that Mr Canderle make payment of \$1,571.56, within 28 days, to Ms Jenkins as a contribution towards costs. It is a condition of my order that the full amount of \$1,500 be paid by Ms Jenkins to the Manawatū Community Law Centre within 14 days of payment being received by her.

Rowan Anderson
Member of the Employment Relations Authority