

Determination of costs

[3] The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks reasonable.² The principles applying to costs are well settled and do not require repeating.³

[4] An assessment of costs will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴

[5] The investigation meeting took less than a day and following submissions from the parties, an oral determination was given. The starting point for calculation of the daily tariff is half a day which is \$2,250.

[6] Mr Stewart claims an award of costs of \$2,500 which is an uplift of \$250 on the usual tariff on the basis that the application by MPM was misconceived.

[7] MPM was on notice at an early stage in the proceedings that it was not Mr Stewart's employer and therefore the Authority had no jurisdiction to investigate and determine its claims.

[8] At the commencement of the investigation meeting Mr McGlone acknowledged there was no employment relationship between the parties. He told me a Disputes Tribunal Referee had indicated to him that there was an employment relationship and so he wished to proceed with his application in the Authority.

[9] At the investigation meeting Mr McGlone believed the direction from the Disputes Tribunal was recorded in its written orders dated 30 August 2016. This document was not available to the Authority on the day of the investigation meeting, however I have now received a copy. The orders do not address the issue of whether there is an employment relationship between MPM and Mr Stewart.

[10] In support of his application for an adjustment to the daily tariff Mr Stewart says Mr McGlone misled the Authority regarding the advice given to him by the

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

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.

Disputes Tribunal Referee that the Authority was the correct forum to take his claims against Mr Stewart.

[11] In his submissions Mr McGlone asserts that the Disputes Tribunal Referee discussed the nature of the relationship verbally during the course of his hearing in that Tribunal.

[12] What happened at the Disputes Tribunal cannot be established. I am however, satisfied that Mr McGlone needed a definitive answer to the question of jurisdiction and pursued his claim to that end.

[13] It is not appropriate to adjust the costs on this matter. The issue was clearly of importance to MPM and required a determination. In all the circumstances I consider an appropriate contribution to costs to be \$2,250. MPM Investments Limited is ordered to pay to Mr Stewart the sum of \$2,250 as a contribution to his costs. Payment must be made within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority