

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 291
3175723

BETWEEN KAMAL (BILLY) PRASAD
Applicant

AND AUCKLAND TRANSPORT
Respondent

Member of Authority: Shane Kinley

Representatives: Allan Halse, advocate for the Applicant
Charlotte Parkhill and Stacey Fletcher, counsel for the
Respondent

Submissions and Up to 15 May 2024 from Applicant
communications received: Up to 8 April 2024 from Respondent

Determination: 17 May 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] On 6 March, the Authority issued a determination in this matter finding that Kamal (Billy) Prasad's claims of unjustified disadvantage were unsuccessful, as were alternative versions of his claims.¹ No orders were made in favour of the applicant.

[2] In that determination, the parties were encouraged to resolve any issue of costs between them, and the Authority made reference to its usual practice of applying the daily tariff to determine costs.

[3] The parties have not been able to resolve costs between themselves and Auckland Transport (AT) filed memoranda on 20 March 2024 seeking a contribution to its costs.

¹ *Kamal (Billy) Prasad v Auckland Transport* [2024] NZERA 132 at [68].

Relevant Background

[4] AT submitted that a contribution to costs of \$8,000 would be appropriate, based on a starting point of a two-day investigation meeting. AT submitted that “no circumstances exist which would require an upward or downward adjustment of the usual tariff”.

[5] Mr Halse has not provided any submissions on AT’s application for costs. He did however lodge a memorandum on 17 March 2024 requesting a summons be issued requiring a third party produce material related to this matter.

[6] In Directions issued on 21 March 2024 I declined the request to issue a witness summons for the third party, stating that “I do not consider that the Authority requires any further documents from [the third party]”. At that time I had also invited submissions on AT’s application for costs in accordance with the timetable to do so, unless leave was sought for an extension to that timetable.

[7] Mr Halse also sought a stay of costs on 28 March 2024, noting that a de novo challenge had been filed in the Employment Court, also on 28 March 2024. That application for stay said that “continuing with a costs claim would unfairly prejudice the applicant should the de novo challenge be successful” and that “a successful challenge would set aside the determination which would have a consequential effect on any costs award”.

[8] A memorandum from counsel for AT was received on 8 April 2024 objecting to the application for a stay, referring as Mr Halse had also done, to s 180 of the Employment Relations Act 2000 (the Act), which states that the making of an election under s 179 of the Act does not operate as a stay of proceedings on the determination of the Authority unless the Court or Authority so orders. AT reiterated it was seeking an order for costs of \$8,000 or in the alternative sought “a determination from the Authority that payment of \$8,000 is to be held by the Authority or Court on trust, pending the outcome of the Challenge”.

[9] In Directions issued on 9 April 2024 I declined the request for a stay but provided a further opportunity for submissions to be made on costs as follows:

If Mr Prasad wishes to make a submission on costs, he will have two weeks in which to do so. If no submissions are received, the Authority will proceed to determine costs on the basis of the information which is before it, including AT’s application for costs dated 20 March 2024 which has previously been provided to Mr Halse.

[10] Mr Halse did not file any submissions on the costs sought by the respondent. An Authority Officer wrote to the parties on 1 May 2024, advising “the timeframe for submissions has passed, so the Member intends to move to determine the matter based on the information that has been received”.

[11] In response to this Mr Halse on 15 May 2024 again provided the Authority Officer with copies of his memorandums of 17 March 2024 requesting a summons and of 28 March 2024 seeking a stay of costs.

[12] The Authority Officer advised Mr Halse on 15 May 2024 “Both of these applications have been considered and declined by the Member, therefore the Authority will proceed with the determination”. Mr Halse replied that day saying “Should that occur, as is our client’s right, we will challenge that determination”.

[13] As no costs submissions have been received for Mr Prasad, I now proceed to determine the matter.

Contribution to Costs

[14] The power of the Authority to award costs is contained in cl 15 of schedule 2 of the Act. 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 for the first day of hearing, and \$3,500 for subsequent hearing days.²

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

[16] The investigation meeting in this matter was for two days and was held in person.

[17] In the present case, AT submits that a contribution to costs of \$8,000 would be appropriate, based on a starting point of a two-day investigation meeting. AT submitted that “no circumstances exist which would require an upward or downward adjustment of the usual tariff”.

[18] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited)*

² For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

*v Da Cruz*³ as confirmed in *Fagotti v Acme and Co Limited*⁴. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful party's conduct.

[19] The correct starting point is the tariff for a two-day investigation meeting, being \$8,000. I accept the submissions for AT that there are no circumstances which would require an upward or downward adjustment from this amount. No adjustment is made.

Orders

[20] Kamal (Billy) Prasad is ordered to pay to Auckland Transport within 28 days of the date of this determination the sum of \$8,000 as a contribution to costs.

Shane Kinley
Member of the Employment Relations Authority

³ [2005] 1 ERNZ 808.

⁴ [2015] NZEmpC 135 at 114.