

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2024] NZERA 545
3242139

BETWEEN JOHN REYNOLDS
Applicant

AND REDICAN ALLWOOD 2021
LIMITED
Respondent

Member of Authority: Natasha Szeto

Representatives: Tim Vogel, advocate for the Applicant
Michael Gould, counsel for the Respondent

Submissions received: 30 June 2024 from the Applicant and 11 July 2024 from
the Respondent

Date: 10 September 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] On 17 June 2024 the Authority issued a determination¹ in which John Reynolds was found to have a personal grievance, in that he had been unjustifiably disadvantaged by his former employer Redican Allwood 2021 Limited (Redican). He was not successful in relation to his constructive dismissal claim. Redican was ordered to pay Mr Reynolds \$8,000.00 compensation for humiliation, loss of dignity and injury to feelings, but I declined to award special damages.

¹ *Reynolds v Redican Allwood 2021 Limited* [2024] NZERA 357.

[2] In the determination, the Authority referred to its usual practice of applying the daily tariff to determine costs and the parties were encouraged to resolve any issue of costs between them. They have been unable to do so.

[3] Mr Reynolds lodged and served a costs memorandum on 30 June 2024. He says he was successful with his disadvantage grievance and because this comprised at least 75 per cent of the investigation time, he should be awarded 75 per cent of the tariff costs of a one day investigation meeting (\$4,500.00). This amounts to \$3,375.00.

[4] Redican lodged and served its costs submission on 11 July 2024. It says Mr Reynolds should only receive 50 per cent of the daily tariff (\$2,250.00) to reflect he was successful on one of his two personal grievance claims. Redican says it might well be argued that costs should lie where they fall, but acknowledges the Authority will be inclined to award modest costs.

Analysis

[5] The Authority has clear statutory power to order such costs and expenses to be paid as the Authority thinks reasonable.² Costs are awarded at the Authority's discretion.³ The principle that costs follow the event is well-recognised by the Authority and courts.⁴

[6] The Authority has adopted a daily tariff approach as the starting point for considering costs, which is well known. The current daily tariff is \$4,500.00 for the first day of hearing.⁵ The parties can expect the Authority to adhere to the approach of applying the daily tariff, unless there is good reason to depart from it.

[7] 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) v Da Cruz*⁶ as confirmed in *Fagotti v Acme and Co Limited*⁷. It is a principle set out in *Da Cruz* that costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct. The financial situation of the party paying costs

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

³ *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622.

⁴ *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [48].

⁵ For further information about the factors considered in assessing costs see:

www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

⁶ [2005] 1 ERNZ 808.

⁷ [2015] NZEmpC 135 at 114.

can be a relevant factor to take into account. Awards made should be modest, and consistent with the Authority's equity and good conscience jurisdiction.

[8] As the successful party, Mr Reynolds is entitled to a contribution to his costs actually and reasonably incurred. Mr Reynolds has provided evidence to show his actual costs exceeded both the amount he now claims, and the one-day tariff for an investigation meeting.

[9] The parties' approach to pro-rating the daily tariff differs, in that Mr Reynolds says in the event of a "mixed success" case, the tariff should only be reduced by the amount of investigation time spent on the unsuccessful claim. Redican says all matters in evidence went to both claims and it is erroneous to allocate parts of the evidence to one claim and parts to another when all matters in evidence related to both claims. Redican's approach is to reduce the tariff by the proportion of unsuccessful claims.

[10] Stepping back to look at matters overall and considering parity with other cases, I consider an award of \$3,375.00 as contribution to costs is appropriate. The full daily tariff is not sought, and this reflects appropriate recognition by Mr Reynolds that he was not successful in all his claims. An award of \$3,375.00 is less than half Mr Reynold's actual costs incurred. Mr Reynolds had to bring his claim to the Authority in order to succeed on his disadvantage claim. Stepping back to look at the matter overall and considering parity with other cases, I consider \$3,375.00 represents a modest and appropriate costs award in the circumstances. Mr Reynolds is also to be reimbursed the Authority's application fee.

Orders

[11] For the reasons set out above, I order Redican Allwood (2021) Limited to pay Mr Reynolds within 28 days of the date of this determination:

- (a) The sum of \$3,375.00 as a contribution to his costs.
- (b) The sum of \$71.55 as a disbursement, being the Authority's filing fee.

Natasha Szeto
Member of the Employment Relations Authority