

Te Wānanga o Aotearoa's claim for costs

[3] TWoA seeks a costs award of the daily tariff of \$4,500. It submits such an award is warranted given:

- it was successful in its claim and costs should follow the event;
- the parties have not been able to agree costs; and
- the actual costs incurred were reasonable and necessary and warrant an uplift in the tariff because Ms Ropiha's conduct amounts to an obstruction of the Authority process and has unnecessarily increased the costs TWoA has incurred.

Costs principles

[4] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.

Costs analysis

[5] TWoA was the successful party. It is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party's costs. It is accepted TWoA has incurred actual costs in respect of this matter. It should receive a contribution to costs incurred.

[6] In assessing an award of costs the notional daily tariff of \$4,500 is a starting point.³ The investigation meeting for this matter took half a day. Adjusting the notional starting point for costs down to reflect actual investigation meeting time to \$2,250 is appropriate.

[7] The next step in the assessment is to consider whether there are factors which warrant an increase or decrease in the tariff. There are no factors to warrant a decrease. An increase is warranted. It is accepted Ms Ropiha's conduct in not complying with the Authority timetabling directions and seeking to exclude TWoA's representatives from this process has caused it to incur additional costs. These actions required TWoA to correspond more frequently and in more detail with Ms Ropiha and the Authority to seek clarification as to whether she would comply with the timetabling directions and if so how. This has increased TWoA's costs unnecessarily and it is appropriate that this is reflected in the costs award. Regarding the compliance and non-publication orders sought – those matters are to be separately considered by the Authority and have not factored in this consideration of an appropriate award of costs

[8] Having assessed all the relevant factors a reasonable contribution to TWoA's costs is a total of \$3,500.00.

Outcome

[9] Within 21 days of today's date Katerina Raukura Roipha is ordered to pay Te Wānanga o Aotearoa \$3,500.00 without deduction being a contribution to costs.

Marija Urlich
Member of the Employment Relations Authority

³ Practise Note 2 Costs in the Employment Relations Authority, 29 April 2022.