

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 707  
3178979

BETWEEN                      MOHAMMED NAZIB BIN  
   SAPTU  
   Applicant

AND                              BARTLE GROUP LIMITED  
   Respondent

Member of Authority:      Davinnia Tan

Representatives:           Applicant in person  
   Paul Robertson, counsel for the Respondent

Investigation Meeting:    On the papers

Submissions received:    2 October 2023 and 9 November 2023 from Applicant  
   27 September 2023 from Respondent

Determination:              27 November 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]      On 18 August 2023 the Authority issued a determination in this matter finding that the Bartle Group Limited (BGL) had correctly paid Mr Saptu his entitlements under his employment agreement and the Holidays Act 2003, and that there was no basis for the Authority to make any orders in respect of the concerns raised by Mr Saptu.

[2]      In that determination, the question of costs was reserved.

[3]      The parties have not been able to resolve costs between themselves and BGL has now applied for costs.

**BGL's submissions**

[4]      BGL submitted that in accordance with the Authority's practice note that relates to costs:

- a. As the unsuccessful party, Mr Saptu should pay BGL's costs;

- b. The daily tariff is \$4,500. As the investigation meeting took half a day, the appropriate starting point is \$2,250;
- c. An uplift of 50% is warranted because BGL had been put to considerable trouble and expense by an unmeritorious claim.

### **Mr Saptu's submissions**

[5] Mr Saptu has submitted that he feels the determination is unfair and is unable to afford costs.

### **Principles**

[6] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which states:

#### **15 Power to award costs**

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[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*<sup>1</sup> as confirmed in *Fagotti v Acme and Co Limited*.<sup>2</sup> 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, and as the Court of Appeal has stated several times, a “steely approach” is to be adopted when considering Calderbank offers.<sup>3</sup>

[8] 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.<sup>4</sup>

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<sup>1</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

<sup>2</sup> *Fagotti v Acme and Co Limited* [2015] NZEmpC 135 at 114.

<sup>3</sup> *Health Waikato v Elmsly* [2004] 1 ERNZ 172 (CA) at [53] and *Blue Star Print v David Mitchell* [2010] NZCA 385 at [20].

<sup>4</sup> For further information about the factors considered in assessing costs, see:

[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)

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

### **Analysis**

[10] Having reviewed parties' submissions on costs, I consider that it is appropriate to award BGL half of the daily tariff of \$2,250 and \$71.56 for the filing fee. My reasons are as follows:

- (a) I agree with and accept BGL's submissions that as the successful party, it is entitled to costs;
- (b) I also agree that the starting point should be \$2,250 as the investigation meeting took half a day;
- (c) It is a clearly established principle that costs in the Authority are to be modest. As such I am not persuaded that an uplift is warranted in these circumstances as submitted by BGL;
- (d) I am not persuaded by Mr Saptu's assertions that he is not able to afford costs as there has been no evidence provided. Further, only half a day's tariff has been granted here;
- (e) In addition, as the successful party, BGL is entitled to the reimbursement of the filing fee.

### **Orders**

[11] I order Mr Saptu to pay BGL \$2,250 as a contribution to legal costs and the filing fee of \$71.56, a total of \$2,321.56 within 28 days of the issuing of this determination.

Davinnia Tan  
Member of the Employment Relations Authority

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<sup>5</sup> [Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi](#), page 5.