

Attention is drawn to the order prohibiting publication of certain information in this matter

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 171
3234979

BETWEEN

W
Applicant

AND

YZ
Respondent

Member of Authority: Antoinette Baker

Representatives: Robbie Bryant, counsel for the Applicant
Naomh McAllister, counsel for the Respondent

Submissions: 7 March 2024 from the Applicant
22 March 2024 from the Respondent

Determination: 25 March 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] I issued a determination on 21 February 2024 and dismissed an application by the Applicant to bring a personal grievance for unjustified dismissal outside of the requisite 90-day timeframe to do so (my determination)¹. Non-publication orders made in my determination continue in this cost determination.

[2] The parties were asked to resolve costs between themselves. Costs have not been resolved.

¹ W v YZ [2024] NZERA 96.

[3] The Authority may order a reasonable contribution to costs incurred in achieving a successful result.²

[4] Costs are discretionary, modest, and are not a mechanism to punish the other party. Some cases may require costs to lie where they fall. The Authority uses a notional daily tariff adjusting this up or down as appropriate depending on the case. Such an adjustment may take into consideration a liable party's means to pay costs, additional preparation required if a case is complex, and any conduct of a party that has unnecessarily increased costs.³

[5] The current tariff applied for a one-day Authority investigation meeting is \$4,500.00. This amount is considered a starting point for assessing a reasonable contribution to the legal costs incurred by a party preparing for and taking part in an investigation meeting but generally not including preparation and attendance at mediation.⁴

[6] YZ as the party successful in defending the application has asked for a contribution to costs at the one-day Authority tariff rate of \$4,500.00. This is on the basis that although the investigation meeting ended at approximately 1.00 pm, a full day at the tariff recognises the evidence and submissions required to defend the application. YZ likens this to another Authority decision where 'two thirds' of the tariff was applied. YZ submits that in the alternative there should be an uplift from a half day tariff to \$3,510.00.

[7] It is submitted for W that a half day tariff of \$2,250.00 is appropriate and there is no reason to depart from this.

[8] When considering the tariff starting point the Authority takes into account reasonable preparation for an investigation meeting. I accept the submission for W that this was a discreet matter to be dealt with and that was reflected in the half day to hear from witnesses and submissions by Counsel. The Authority matter referred to by YZ⁵ was a preliminary matter about status of employment, a more expansive legal issue than what I dealt with here. In any event, costs are also considered on a case-by-case basis.

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

³ <https://www.era.govt.nz/determinations/awarding-costs-remedies/>; *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme and Co Limited* [2015] NZEmpC 135 at 106-108.

⁴ <https://www.era.govt.nz/determinations/awarding-costs-remedies/>.

⁵ *Hutching v Fourth Estate Holdings (2012) Limited* [2017] NZERA 50.

[9] YZ submits that further costs were associated with further information I requested after the investigation meeting, and overall significant costs were incurred including the preparation of comprehensive submissions and its costs application. I accept the submissions for W that I have nothing to support these extra costs, again the matter was discreet, and the information sought by me after the investigation meeting was to obtain clarity related to email copy evidence and attachments provided by YZ.

[10] Considering the above I am not satisfied there should be an uplift to a half day tariff.

Summary

[11] W is to pay YZ a \$2,250.00 contribution to its costs.

Antoinette Baker
Member of the Employment Relations Authority