

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2019] NZERA 675
3043711

BETWEEN

KIM ASHBY
Applicant

AND

**NIWA VESSEL
MANAGEMENT LIMITED**
First Respondent

Member of Authority: Vicki Campbell

Representatives: Steven Zindel for Applicant
Penny Shaw for Respondent

Submissions received: 2 November from Applicant
17 November from Respondent

Determination: 25 November 2019

COSTS DETERMINATION OF THE AUTHORITY

- A. NIWA Vessel Management Limited is ordered to pay to Ms Ashby the sum of \$4,500 as a contribution toward costs within 28 days of the date of this determination.**

[1] In a determination dated 7 October 2019 I found Ms Ashby to have been unjustifiably dismissed and awarded remedies under s 123 of the Employment Relations Act 2000.¹

¹ *Ashby v NIWA Vessels Management Limited* [2019] NZERA 571.

[2] I reserved costs and invited the parties to resolve the issue between them. The parties have been unable to resolve the matter and Ms Ashby has lodged a costs memorandum seeking a determination of the issue of costs.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.² The principles applying to costs are well settled and do not require repeating.³

[4] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴ This information was set out in a Notice of Direction dated 1 April 2019 and issued to the parties at that time and reiterated in my determination dated 7 October 2019.

[5] The investigation meeting took one day so the starting point is \$4,500. I see no reason to depart from the normal daily tariff basis.

[6] Ms Ashby was in receipt of legal aid and has provided copies of the invoices paid by the Ministry of Justice. The invoices included all legal fees and disbursements.

[7] While Ms Ashby's costs exceeded \$8,000 (which by all accounts is very reasonable) she has indicated that she has or intends to apply for a write off for part of the total amount invoiced so the actual amount of costs is not yet known.

[8] Taking all factors into account I have concluded a reasonable contribution to Ms Ashby's costs is \$4,500. NIWA Vessel Management Limited is ordered to pay to Ms Ashby the sum of \$4,500 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority

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

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.