

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 218
3115615

BETWEEN THOMAS BRANSCOMBE
Applicant

AND ULTIMATE CLEAN
LIMITED
Respondent

Member of Authority: Leon Robinson

Representatives: Dave Cain, counsel for the Applicant
No appearance for the Respondent

Submissions received: 10 May 2022 from the Applicant
Nil from the Respondent

Determination: 27 May 2022

COSTS DETERMINATION OF THE AUTHORITY

Application for costs

[1] Thomas Branscombe succeeded in his application to the Authority to resolve his personal grievance for unjustifiable dismissal, recovery of wages arrears and for the imposition of penalties. He now makes application that following that event, he ought to have an award of costs in his favour. Ultimate Clean Limited (UCL) took no steps to defend Mr Branscombe's claims against it and at no stage did it seek the Authority's leave to respond to Mr Branscombe's claims out of time.

The Authority's approach

[2] Clause 15 of the 2nd Schedule to the Employment Relations Act 2000 gives the Authority a wide discretion to order a party to pay another party's costs and disbursements as the Authority thinks reasonable.

[3] The principles for assessing and awarding costs in the Authority are well established, see *PBO Ltd (formerly Rush Security Ltd) v D Cruz*¹. The Authority applies a ‘notional daily tariff’ based approach to assessing costs. The current notional daily tariff is \$4,500.00 for the first day of an investigation meeting and \$3,500.00 for each subsequent day.

[4] That approach gives the Authority a notional starting tariff, which must then be adjusted to reflect the particular circumstances of each case. The Authority can adjust the notional daily tariff, on a principled basis, as required. The ‘notional daily tariff’ is the approach that has been used for assessing costs in this matter.

The reasoning

[5] In its determination dated 26 April 2022 the Authority urged the parties to agree costs between them. In the event that the matter could not be agreed or if UCL failed to engage, Mr Branscombe was permitted 14 days in which to submit a memorandum and Ultimate Clean Limited a further 14 days thereafter to respond.

[6] Mr Branscombe duly lodged his application on 10 May 2022. Ultimate Clean did not submit any memorandum in reply. Mr Branscombe’s costs are advised to be in the sum of \$5,750.00 together with disbursements of \$71.56 and GST of \$873.23. He now seeks the Authority’s determination on costs.

[7] I am satisfied that it is appropriate that Mr Branscombe be granted an order that UCL make a contribution to his costs. Mr Branscombe shall have the usual day one tariff payment of \$4,500.00 but pro-rated for the half day investigation meeting together with the reimbursement of the lodgement fee.

The result

[8] Accordingly, I order Ultimate Clean Limited to pay to Thomas Branscombe the sum of \$2,321.56 (Two thousand three hundred and twenty-one dollars and fifty-six cents).

Leon Robinson
Member of the Employment Relations Authority

¹ [2005] 1 ERNZ 808.