

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 71
3053873

BETWEEN BENJAMIN BREWSTER
Applicant

AND STRAY LIMITED
Respondent

Member of Authority: Robin Arthur

Submissions: From the Respondent on 18 February 2022 and from
the Applicant on 25 February 2022

Determination: 7 March 2022

COSTS DETERMINATION OF THE AUTHORITY

[1] Stray Limited sought an order for payment of costs that the company incurred in successfully opposing liability for a wage arrears claim from a former employee, Benjamin Brewster.¹ Mr Brewster's claim was determined 'on the papers', that is on the basis of documents and submissions provided by the parties, without having to attend an investigation meeting in person.

Factors in assessing costs

[2] The Authority's jurisdiction to order a party to pay reasonable costs and expenses is exercised by applying some well-established "basic tenets" to the particular circumstances of the case.² Those tenets recognise that a successful party should receive a contribution to costs reasonably incurred in reaching that result; costs should generally be modest and may not be used to punish an unsuccessful party; the nature of the case may allow for an order that costs lie where they fall; and the Authority may use a notional 'daily rate' or 'tariff' as a starting point to assess costs. Undue rigidity

¹ *Brewster v Stray Limited* [2022] NZERA 3.

² Employment Relations Act 2000, Scheduled 2, clause 15 and *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].

in applying that tariff is avoided by upward or downward adjustments appropriate to the particular case. Those adjustments may account for a liable party's means to pay costs, the preparation required in particularly complex matters and where conduct of parties has unnecessarily increased costs.

[3] The Authority's current tariff for a one day investigation meeting is \$4,500. This amount is taken as an appropriate starting point for assessing a reasonable contribution to the costs incurred by a party in preparing for and taking part in an investigation meeting.

The parties' views

[4] The Authority had encouraged the parties in this case to resolve any issue of costs between themselves. Stray Limited said they were not able to do so and asked the Authority to order Mr Brewster to pay costs at the tariff level for a one-day investigation meeting. Stray Limited acknowledged no such event was held but said it had nevertheless incurred significant legal costs in responding to Mr Brewster's claim.

[5] Mr Brewster, in reply, said costs should lie where they fell because neither party was put to the expense of having to prepare witness statements and then going to an investigation meeting so witnesses could answer questions about their evidence and the representatives could make submissions in person.

Assessment

[6] Weighing the relevant 'tenets' referred to above, neither party's proposal for a costs order was appropriate for the particular circumstances of this case. They had agreed the matter should be determined on the papers. It was not reasonable to order Mr Brewster to pay costs at the level that would have applied to a full-day investigation meeting if one had been held, with all the costs of preparation and attendance that would have involved.

[7] On the other hand, Stray Limited was put to significant effort in responding to Mr Brewster's wage arrears claim. Records on the Authority file, including the company's statement in reply, show it initially had the assistance of legal counsel although the company's director Brett Hudson later conducted its response and provided its submissions. The nature of this case, a wages arrears claim, was not inherently one where costs should necessarily lie where they fell. Neither was there

any information indicating Mr Brewster lacked means to contribute towards Stray Limited's costs. An appropriate level at which to do so was one quarter of the Authority's usual daily tariff, that is \$1,125. This amount recognises Stray Limited was successful in responding to his claim and requires a contribution to costs incurred at a level which is significant but modest, consistent with the applicable tenets for assessing and ordering costs.

Order

[8] Mr Brewster must pay Stray Limited the sum of \$1,125 as costs within 28 days of the date of this determination.

Robin Arthur
Member of the Employment Relations Authority