

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2023] NZERA 335  
3206899

BETWEEN

DAVID BRYANT  
Applicant

AND

SKF CONTRACTING  
LIMITED  
Respondent

Member of Authority: Rowan Anderson

Representatives: Lars Hansen, counsel for the Applicant  
Shane Flavell, in person for the Respondent

Investigation Meeting: On the papers

Submissions received: 13 June 2023 from the Applicant  
22 June 2023 from the Respondent

Determination: 26 June 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Background**

[1] On 1 June 2023 the Authority issued a determination<sup>1</sup> in which I found that a compliance order, as sought by David Bryant, should be made against SKF Contracting Limited (SKF) in relation to payments due in accordance with orders made by the Authority in a consent determination.

[2] Costs were reserved and the parties have not been able to agree on costs. Mr Bryant now asks the Authority for orders as to the costs he incurred in pursuing his claims.

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<sup>1</sup> Bryant v SKF contracting Limited [2023] NZERA 284.

[3] Mr Bryant submits that his total costs and disbursements incurred were \$2,879.54 inclusive of GST. Mr Bryant seeks orders requiring SKF to make payment of the following in relation to his costs:

- (a) \$71.56 as reimbursement of the filing fee;
- (b) \$46.00 in disbursements; and
- (c) \$2,250 in costs on the basis of the daily tariff and a half-day investigation meeting.

[4] SKF submits that the costs claimed are excessive and that there is no basis for an uplift. SKF also made submissions relating to the background to the proceedings and what it says were attempts to resolve the relevant matters.

### **Analysis**

#### *Costs principles*

[5] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.<sup>2</sup>

[6] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that Calderbank offers may be taken into account in setting costs, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.<sup>3</sup>

[7] The daily tariff is usually taken as a starting point,<sup>4</sup> although is not to be used in a rigid manner, with principled adjustments made having regard to the to the particular characteristics of a case.

#### *Application of the daily tariff*

[8] Mr Bryant was successful in pursuing his claims against SKF and it is appropriate that costs follow the event.

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>3</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

<sup>4</sup> Practice Note 2: Costs in the Employment Relations Authority, issued 29 April 2022.

[9] The substantive proceeding involved the setting down of a one-day investigation meeting. However, the investigation meeting did not consume the whole day and concluded at approximately 11.00am.

[10] Having regard to the time required at the investigation meeting, I consider the appropriate starting point would see a contribution of \$1,500 as representing one-third of one-day.

[11] Mr Bryant seeks an order based on the daily tariff with a small uplift on the basis that the matter could have appropriately been dealt with on the papers, but that SKF sought an investigation meeting be held. He submits that SKF failed to provide clarification as to documents lodged by SKF in the course of the proceedings and that SKF ultimately offered no substantive defence to the application for a compliance order resulting in Mr Bryant incurring unnecessary costs.

[12] No explanation was provided as to the basis for the claimed disbursements of \$46.00 and I decline to make an order for payment of the claimed disbursements. However, I am satisfied that Mr Bryant should be reimbursed the filing fee of \$71.56.

[13] Having considered all of the submissions, I am satisfied that a modest uplift is appropriate on the basis that SKF's approach to the proceedings resulted in Mr Bryant unnecessarily incurring additional costs, including in preparing and lodging a statement in reply to material that resulted from irrelevant material lodged by SKF. However, I consider that only a small uplift is appropriate in the amount of \$300.00.

[14] I am satisfied that the costs claimed were reasonably incurred. I order SKF to make payment to Mr Bryant, within 28 days, of the total sum of \$1,800 in addition to reimbursement for the filing fee of \$71.56.

### **Summary of orders**

[15] For the above reasons I order SKF Contracting Limited to pay Mr Bryant, within 28 days of this determination:

- (a) \$1,800 as a contribution to towards Mr Bryant's costs of representation; and
- (b) \$71.56 as reimbursement of the filing fee.