

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 619
3118624

BETWEEN

PRINCE COLLIER
Applicant

AND

MD CONSTRUCTION LIMITED
Respondent

Member of Authority: Sarah Kennedy

Representatives: Robert Morgan, advocate for the Applicant
Alwyn O'Connor, counsel for the Respondent

Submissions Received: 21 October 2022 from the Applicant

Date of Determination: 24 November 2022

COSTS DETERMINATION OF THE AUTHORITY

[1] Prince Collier applies for an order for payment of costs that he incurred in pursuing his personal grievance claim against MD Construction Limited. In my determination dated 10 October 2022, Mr Collier was successful and was awarded lost wages and compensation.¹

[2] In that determination, the parties were encouraged to resolve any issue of costs between them. The parties have not been able to do that and there has been no response from the MD Construction to the costs application.

When are costs awarded?

[3] The Authority's jurisdiction to order a party to pay reasonable costs and expenses is exercised by applying some well-established principles to the particular case.² Those principles recognise that a successful party should receive a contribution to costs reasonably incurred in

¹ *Prince Dion Collier v MD Construction Limited* [2022] NZERA 517.

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

reaching that result; costs are discretionary and 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.

[4] Undue rigidity 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 the conduct of parties has unnecessarily increased costs.³

[5] The Authority’s current tariff for a one-day investigation meeting is \$4,500.00. The investigation meeting took a half a day of hearing time. The respondent was late so I estimate that Mr Collier and his representative spent two thirds of a day at the hearing. They were prepared and ready to go and Mr Collier should not be penalised for MD Construction’s mistake about the venue. That means \$3,000.00 is 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.

What does Mr Collier say is an appropriate costs award?

[6] Mr Collier’s view is that MD Construction’s conduct during these proceedings warrants an uplift from the Authority’s tariff. He also seeks reimbursement of his representatives travel costs of \$184.00 and the filing fee of \$71.56.

[7] Multiple deadlines were not met by MD Construction. MD Construction failed to lodge a statement in reply. Six dates were provided by the Authority to allow MD Construction to lodge a statement in reply being 30 September 2020, 4 December 2020, 4 August 2021, 15 November 2021, 11 February 2022 and 11 March 2022). Two case management conferences were not attended by MD Construction. It attended the third one but without a statement of reply being lodged.

[8] The investigation meeting set down for 18 March 2022 was adjourned for Covid related reasons. At that time no witness list had been provided, no briefs and no statement of reply lodged in the Authority.

³ Above n2.

[9] The statement in reply and witness statements were lodged after hours on 15 March 2022 despite multiple requests for these documents to be lodged in accordance with earlier timetables.

[10] On 16 March a video MD Construction was seeking to rely on and that was central to MD Construction's justification for the dismissal, was lodged in the Authority.

[11] The investigation meeting was eventually held on 14 June 2022 and the respondent did not attend the investigation meeting on time. After the Authority Officer made enquiries it was established MD Construction and its counsel were at mediation services which was not the venue in the notice of investigation.

Assessment

[12] The investigation meeting took three quarters of a day. The delays clearly increased costs for Mr Collier and caused Mr Morgan to repeat the stages of preparation for the investigation meeting. Weighing the relevant principles referred to above, having been successful, Mr Collier is entitled to a contribution towards his costs with an uplift for conduct that unnecessarily increased Mr Collier's costs. I consider that an uplift from \$3,000.00 for two thirds of a day in hearing time, to \$5,000.00 together with the filing fee of \$71.56 is appropriate.

Order

[13] MD Construction Limited is ordered to pay Prince Dion Collier the sum of \$5,000.00 as a contribution towards his costs, together with the filing fee of \$71.56 within 28 days of this determination.

Sarah Kennedy
Member of the Employment Relations Authority