

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 673
3267739

BETWEEN SRI HIDAYAT ESTHAUFIK
Applicant

AND FORMSTRESS PRECAST
LIMITED
Respondent

Member of Authority: Marija Urlich

Representatives: Danny Gelb, advocate for the Applicant
Richard Harrison, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and 17 October 2024, from the Applicant
information received: 29 October 2024, from the Respondent

Determination: 13 November 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination on 3 October 2024 which found Mr Esthaufik had established a personal grievance for unjustified dismissal and awarded compensatory remedies in his favour.¹ Costs were reserved and a timetable set if the parties were unable to resolve this issue themselves which they advise has not been possible.

[2] Mr Esthaufik seeks by way of memorandum filed and served within the timetable a contribution to costs from Formstress Precast Limited. FPL has filed a reply.

¹ *Sri Hidayat Esthaufik v Formstress Precast Limited* [2024] NZERA 583.

Costs principles

[3] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.

Mr Esthaufik's claim for costs

[4] Mr Esthaufik seeks an award of \$7,500, as a contribution to total costs of representation incurred after mediation of \$15,590.16. Supporting invoices have been provided. He submits the award sought is warranted given:

- he was the successful party and costs should follow the event;
- the investigation meeting required one full hearing day; and
- FPL failed to accept a reasonable *Calderbank* offer made on 1 December 2023 which had it been accepted would have meant it was better off.

FPL's position on costs

[5] FPL submits costs should lie where they fall – the business is in a difficult position, further redundancies have occurred since Mr Esthaufik's employment ended and awards in addition to those made by the Authority in the substantive determination may negatively impact its trading position.

Costs analysis

[6] Mr Esthaufik was the successful party and it is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party's costs.

[7] The notional daily tariff is a starting point. The applicable daily tariff is \$4,500 with each subsequent day at \$3,500. This matter involved one full day investigation meeting so the starting point is \$4,500.

[8] An uplift is warranted. An effective *Calderbank* offer was made which FPL did not accept having had a reasonable opportunity to give it consideration. FPL's failure to accept the offer was unreasonable - had it accepted it would have been better off financially and the parties would not have been put to further expense. An uplift of \$2,000 is appropriate.

[9] Should costs lie where they fall due to FPL's financial situation? In the earlier determination, the Authority accepted FPL was facing a downturn in business which had caused it to look to restructure the business including disestablishing positions. The business continues and no further evidence as to its financial situation has been provided to the Authority. FPL has not applied for orders for payment by instalment which, if made would be on grounds its financial position so required. This is not a case where it is appropriate to order costs to lie where they fall.

[10] A fair costs award, given all the relevant circumstances is \$6,500 in Mr Esthaufik's favour. He is also entitled to be reimbursed the filing fee of \$71.55.

Outcome

[11] Formstress Precast Limited is ordered to pay Sri Hidayat Esthaufik \$6,500.00 as a contribution to costs incurred and \$71.55 to reimburse the filing fee.

Marija Urlich
Member of the Employment Relations Authority