

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA116
3093314

BETWEEN	OLIVIA FRASER Applicant
AND	EL TURKO LIMITED Respondent

Member of Authority:	Claire English
Representatives:	Dave Cain, advocate for the Applicant Cengiz Kanat, for the Respondent
Submissions received:	3 February 2022 from Applicant None received from Respondent
Determination:	30 March 2022

COSTS DETERMINATION OF THE AUTHORITY

Background

[1] In my determination dated 21 December 2021, I found that the applicant, Ms Fraser, was entitled to be paid outstanding wages, outstanding holiday pay, interest on unpaid monies, and a penalty.

[2] I reserved costs, and encouraged the parties to resolve any issues of costs between themselves.

[3] The parties have been unable to do so. Ms Fraser has provided submissions in support of her claim for an award of costs payable to her by the respondent. These submissions have been sent to the Director of the respondent, Mr Kanat. He has not responded, although ample time has been provided to him in which to respond.

[4] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days¹.

[5] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[6] The investigation meeting in this matter was for one day, and was held in person. The applicant attended together with her representative and witnesses, and Mr Kanat appeared for the respondent, together with a witness.

[7] In the present case, the applicant seeks payment of her actual costs, being \$4,571.56, plus the filing fee of \$71.56. This is a slight uplift on the daily tariff. The applicant submits that this is appropriate as this amount is both “actual and reasonable”, and reflect the respondent’s general lack of engagement throughout the proceedings.

Principles

[8] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[9] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*² as confirmed in *Fagotti v Acme and Co Limited*³. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to

¹ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

² [2005] 1 ERNZ 808.

³ [2015] NZEmpC 135 at 114.

be used as a punishment or expression of disapproval of the unsuccessful parties conduct.

[10] Ms Fraser has not put forward any compelling argument as to why there should be departure from the normal daily tariff rate, especially as the departure asked for is small. Although the respondent did not engage in the more fulsome manner that might have been expected if it had been represented, the investigation meeting ran smoothly and its duration was not prolonged taking into account the number of witnesses and the issues involved.

Orders

[11] I am not persuaded that there is any reason to depart from the normal tariff approach. Accordingly, I order El Turko Limited to pay to Ms Fraser the sum of \$4,500 towards costs, together with the filing fee of \$71.56.

Claire English
Member of the Employment Relations Authority