

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 699
3306300

BETWEEN GQM
 Applicant

AND PSK
 Respondent

Member of Authority: Andrew Gane

Representatives: Claire Mansell, counsel for the Applicant
 No appearance from the Respondent

Submissions received and 6 September and 30 October 2024 from the Applicant
other material

Date: 22 November 2024

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] A determination issued 19 August 2024, found PSK breached the terms of a record of settlement by making disparaging comments about GQM and by breaching the confidentiality obligations as set out in the record of settlement. PSK was ordered to comply with the record of settlement and a penalty was ordered against PSK.¹

[2] Costs were reserved and the parties encouraged to resolve any issues of costs between themselves. They have been unable to resolve costs.

[3] GQM seeks an order for costs \$4,500 against PSK and disbursements of \$71.55 for the lodging fee.

¹ *GQM v PSK* [2024] NZERA 498.

[4] GQM's application for costs was served on PSK on 6 September 2024. PSK did not lodge a reply memorandum.

GQM's submissions

[5] GQM's counsel submits that an appropriate costs award against PSK in the circumstances is \$4,500 (the daily tariff) as:

- (a) the matter did not involve an in-person full day hearing, it was heard on the papers;
- (b) GQM was successful in its application for compliance orders against PSK;
- (c) the starting point is that costs should follow the event;
- (d) GQM's actual costs exceeded the full daily tariff.

[6] PSK has not participated in these proceedings.

Analysis

Costs in the Authority

[7] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Employment Relations Act 2000.

Costs follow the event

[8] The usual principle for costs is that a successful party is entitled to a contribution towards their representation costs.

[9] This matter was dealt with on the papers. When a party has incurred costs for representation by a lawyer or other advocate, the Authority may order whichever party is unsuccessful to contribute to reasonably incurred costs of the other party.

Application of the daily tariff

[10] The Authority has adopted a daily tariff approach as the starting point for considering costs. The current daily tariff is \$4,500.00 for the first day of hearing, and \$3,500.00 for subsequent hearing days.²

² For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1 .

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

[12] GQM says costs should be fixed at a rate that is the daily tariff for the first day of an investigation meeting in the amount of \$4,500.00. It is submitted this is a reasonable amount for a preliminary matter that was able to be resolved on the papers and that actual costs exceeded the daily tariff.

[13] Given the matter was heard on the papers I adopt a starting point of a quarter of the notional daily tariff being \$1,125.00.

Adjusting the daily tariff

[14] I do not consider there are any additional matters that require an uplift to the starting point.

Conclusion

[15] GQM was the successful party and is entitled to an award of legal costs. I consider that an award for costs in the amount of \$1,125.00 to be an appropriate amount.

Orders

[16] PSK is ordered to pay GQM \$1,125.00 as a contribution to GQM's costs and disbursements of \$71.55 for the lodging fee.in this matter. This is to be paid within 28 days of this determination.

Andrew Gane
Member of the Employment Relations Authority