



\$16,164.69 gross and \$14,000 compensation pursuant to section 123 (1)(c)(i) of the Employment Relations Act 2000 (the Act).<sup>1</sup>

[2] Costs were reserved. The investigation meeting of 17 September 2024 was conducted by an audio-visual link and took up just under half a day.

### **The application for costs**

[3] In a memorandum of 9 January 2025, Mr Gencer's advocate sought costs of \$6,500 and a disbursement, being the Authority filing fee. In seeking this uplift in costs on the Authority's normal daily tariff approach, Mr Kersjes suggested Ya Hay's representative, Halit Yilmaz was obstructive during the lead up to the investigation meeting by consistently not engaging in the process which he says increased Mr Gencer's legal costs.

[4] Counsel for Ya Hay Limited accepted that Mr Gencer had succeeded in his personal grievances and that he was entitled to a costs' contribution of the normal half daily tariff of \$ 2,250. Counsel noted that no description of how the additional costs incurred had been provided beyond generalities and that the invoice claiming to be the actual costs incurred (being \$15,624.16 inclusive of GST), provided no breakdown on how these costs had been allocated during the dispute and appeared excessive for a half day investigation meeting.

### **Assessment**

#### *The Authority's costs approach*

[5] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000.

#### *Costs for Mr Gencer*

[6] A starting point is that costs normally follow the event and as Mr Gencer was successful in his personal grievance and obtained significant compensatory remedies, an award of costs is appropriate.

---

<sup>1</sup> *Ali Gencer v Ya Hay Limited* [2024] NZERA 737.

### *Applying the daily rate*

[7] The Authority's general approach is to apply a notional daily rate and only adjust that rate if persuaded that circumstances or other factors require an upward or downward adjustment.<sup>2</sup> The current full daily rate is \$4,500 for the first day of an investigation meeting.

### *Adjusting the daily rate*

[8] The investigation meeting took half a day and despite a prior lack of responses and failing to adhere to timetabling, Mr Yilmaz did participate in investigation meeting.

[9] In all the circumstances, I consider a modest uplift in the daily rate is warranted or Mr Gencer would be disproportionately punished for pursuing what were his contractual entitlements. I fix that uplift at \$750.

### **Order**

[10] Ya Hay Limited is to pay Ali Gencer a contribution to his legal costs in the amount of \$3,000 and to reimburse Mr Gencer the Authority filing fee of \$71.55, within 28 days of this determination being issued.

David G Beck  
Member of the Employment Relations Authority

---

<sup>2</sup> For further information about the factors considered in assessing costs see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)