

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2023] NZERA 18  
3061053

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| BETWEEN | LEONARD GRANT<br>Applicant                |
| AND     | KING BROS WAIROA<br>LIMITED<br>Respondent |

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|------------------------|---|
| Member of Authority:   | Shane Kinley  |
| Representatives:       | Monique Rowe, counsel for the Applicant<br>Ngawai King for the Respondent |
| Investigation Meeting: | On the papers   |
| Submissions received:  | 4 December 2022 from the Applicant<br>No submissions from the Respondent  |
| Determination:         | 17 January 2023   |

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Background**

[1] On 21 November 2022 the Authority issued a determination in relation to an employment relationship problem that found Leonard Grant had been an employee of King Bros Wairoa Ltd from 16 March 2018 until 9 July 2018 and was owed wages, including holiday pay and KiwiSaver contributions.<sup>1</sup>

[2] Costs were reserved and the parties were encouraged to resolve this matter between themselves. They have been unable to do this and Mr Grant, as the successful party, now seeks a contribution to his costs.

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<sup>1</sup> *Leonard Grant v King Bros Wairoa Limited* [2022] NZERA 610.

[3] The discretion to award costs, whilst broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has power to award any party to pay to any other party such costs and expenses as the Authority thinks reasonable.<sup>2</sup> Costs are awarded in the Authority generally starting from the daily tariff, currently \$4,500, with upward and downward adjustments made if appropriate to the circumstances of the case.<sup>3</sup>

### **The parties' submissions**

[4] Mr Grant claims a total of \$19,750.80, being \$8,000 for two hearing days (9 September 2020 and 12 March 2021) and “costs for legal services and reasonable disbursements” of \$11,750.80.

[5] Mr Grant calculated costs based on the daily tariff of \$4,500 for the first day of an investigation applying for the hearing day of 9 September 2020, and the daily tariff of \$3,500 for the additional day of an investigation applying for the hearing day of 12 March 2021.

[6] Mr Grant also seeks an upward adjustment to the daily tariff of an amount that the Authority considers reasonable on the basis that King Bros had in the course of proceedings conducted themselves in a way that has unnecessarily increased costs and caused costs to be unreasonably incurred. In support Mr Grant referred to Ms King’s evidence, as a company director and on behalf of King Bros, having been found by former Authority Member MacKinnon to have been inconsistent and misleading.

[7] King Bros and Ms King did not respond to Mr Grant’s application for costs or a subsequent advisory about the timeframe for responding from an Authority Officer

### **Conclusion and orders**

[8] There is no basis on which the Authority should depart from the notional daily tariff in this case. I am satisfied that the investigation meetings for this matter occupied full days on both 9 September 2020 and 12 March 2021. Having reviewed the Authority’s determination, while findings of fact were made in relation to some of Ms

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<sup>2</sup> Employment Relations Act 2000, schedule 2, clause 15.

<sup>3</sup>For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1>.

King's evidence, in the absence of clear submission on how this impacted on the costs of proceedings, I am not convinced that these warrant an upward adjustment to the daily tariff.

[9] In terms of reimbursement of costs sought by Mr Grant for legal services and reasonable disbursements, while some break down of these costs was provided, a number of these costs appear to be for matters that are intended to be covered by the daily tariff (such as client meetings, document preparation and witness preparation). For other aspects where reimbursement may have been appropriate, insufficient evidence was provided to support an order and I decline to make such an order.

[10] King Bros must pay Mr Grant costs in the sum of \$8,000 as a contribution towards the costs he incurred in pursuing his claims, together with reimbursement of a filing fee of \$71.56.

Shane Kinley  
Member of the Employment Relations Authority