

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 675
3159525

BETWEEN SHANE HADFIELD
Applicant
AND ATLAS CONCRETE
LIMITED
Respondent

Member of Authority: Sarah Blick
Representatives: Grace Liu, counsel for the applicant
James Turner, counsel for the respondent
Investigation: On the papers
Submissions received: 5 September 2023 from the applicant
No submissions from the respondent
Determination: 14 November 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination on 23 August 2023 finding Shane Hadfield had personal grievances for unjustified disadvantage and dismissal. Atlas Concrete Limited (Atlas) was ordered to pay compensation of \$16,000 less 20 percent for contribution, and lost wages.¹ The issue of costs was reserved for the parties to attempt to resolve, which they have not. Mr Hadfield has accordingly applied for costs.

Costs principles

[2] The Authority's power to award costs is set out in clause 15 of Schedule 2 of the Employment Relations Act 2000. The power is discretionary with its use governed by principles.² These include that costs will usually follow the event; costs are not to be used as

¹ *Hadfield v Atlas Concrete Ltd* [2023] NZERA 470.

² *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award; it is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable; the discretion is exercised in accordance with principle and not arbitrarily, considering equity and good conscience. When considering costs, the starting point is the Authority's daily tariff, which is \$4,500 for a one-day investigation meeting and \$3,500 for each day thereafter.

Costs submissions

[3] Mr Hadfield was represented by First Union which submitted that he was successful and is entitled to costs as a result. The investigation meeting was held over two days and Mr Hadfield seeks the daily tariff amount without further adjustment.

[4] Atlas did not lodge a costs memorandum within the timetable set or seek to vary the timetable, but by email counsel has stated Atlas was partially successful, on the basis the Authority found the dismissal was substantively justified (albeit procedurally unjustified).

Costs assessment

[5] Mr Hadfield was the successful party and costs should follow the event. He is entitled to a contribution to costs. The investigation meeting took two days which attracts a daily tariff of \$8,000.

[6] Mr Hadfield does not seek an uplift to that amount nor is one warranted. No adjustment downwards is warranted either.

Outcome

[7] Atlas Concrete Limited is ordered to pay \$8,000 in costs and \$71.55 (being the Authority application fee) to Shane Hadfield within 14 days of the date of this determination.

Sarah Blick
Member of the Employment Relations Authority