

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2023] NZERA 164  
3148325

BETWEEN	DARCY HARRISON Applicant
AND	KEITH BURMEISTER CONTRACTING LIMITED Respondent

Member of Authority:	Claire English
Representatives:	Paul Matthews, counsel for the Applicant Keith Burmeister for the Respondent
Submissions received:	21 February 2023 from Applicant No response received from Respondent
Determination:	4 April 2023

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

[1] On 16 February 2023, I issued a determination in this matter, upholding the applicant's claim of unjustifiable dismissal, and awarding lost remuneration, unpaid entitlements under the Holidays Act 2003 in relation to annual leave, work done on identified public holidays, unpaid alternative holidays not taken, a sum in compensation for hurt and humiliation, and penalties for the respondent's failure to provide wage and time records in a timely way.

[2] In that determination, the parties were encouraged to resolve any issue of costs between them. The determination made reference to the Authority's usual practice of applying the daily tariff to determine costs, together with an indication that the parties could expect the Authority to determine the matter of costs on the basis of the usual daily tariff for a one day hearing, (eg, \$4,500), and noting that the investigation meeting was held over two part days.

[3] The parties have not been able to resolve costs between themselves. The applicant has applied for costs, on the basis that costs should follow the event, and seeking the amount of the daily tariff for a one-day hearing, plus the application fee of \$71.56.

[4] The respondent has been given time to respond. The applicant's application was sent to the respondent at the respondent's preferred address, and additional time was allowed for the receipt of the respondent's response by way of post, being the respondent's preferred means of contact with the Authority. The respondent has chosen not to respond to the applicant's costs application.

[5] I am satisfied that both the substantive determination and the application for costs were validly served on the respondent, and that the respondent has had the opportunity to respond if Mr Burmeister had wished to do so. Accordingly, I now proceed to determine the costs application.

[6] The applicant is the successful party. No awards were made to the respondent. As the successful party, the applicant is entitled to a contribution to his legal costs.

[7] When considering what that contribution to costs might be, the Authority has adopted a daily tariff approach as the starting point for consideration. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days<sup>1</sup>.

[8] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it. This was signalled to the parties at the first case management conference, and again in the substantive determination.

[9] The investigation meeting in this matter took place over two half days. This was in essence to accommodate the needs of Mr Burmeister.

[10] This suggests that an award equal to one full hearing day should be made. This is what the applicant has requested. This is more than fair in the circumstances, given the disruption of having the hearing split over two days instead of one.

---

<sup>1</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)

[11] I award the applicant a contribution to costs in the sum of \$4,500.

[12] In addition, the applicant has requested that the filing fee of \$71.56 be reimbursed to him. As the successful party, he is entitled to have this actual disbursement refunded to him. I so order.

**Orders**

[13] Keith Burmeister Contracting Limited is ordered to pay to Darcy Harrison within 28 days of the date of this determination:

- a. A contribution to costs in the sum of \$4,500 without deduction;
- b. The amount of the filing fee, being \$71.56 without deduction.

Claire English  
Member of the Employment Relations Authority