

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2019] NZERA 494
3058896

BETWEEN ORLA KAVANAGH
 Applicant

AND RAINBOW POWER LIMITED
 Respondent

Member of Authority: Michael Loftus

Representatives: Michael Fennessy, counsel for the Applicant
 Nil for the Respondent

Investigation Meeting: On the papers

Date of Determination: 21 August 2019

COSTS DETERMINATION OF THE AUTHORITY

[1] On 12 July 2019 I issued a determination concerning a compliance application brought by Ms Kavanagh with which she was successful.¹ Costs were reserved and Ms Kavanagh now seeks an order in her favour.

[2] Rainbow Power Limited's position is unknown. As was the case with the substantive issue it has again failed to respond.

[3] All companies are required to have an address for service and all relevant documents have been sent to that address.² I am satisfied service has occurred and note the documents included advice that if nothing was heard from the respondent by 12.00pm Wednesday 21 August 2019 the matter would be determined on the papers already before the Authority. There has been no response.

¹ [2019] NZERA 415

² Section 192(1) of the Companies Act 1993

[4] There was, as already said, no reply. Rainbow Power's continued reluctance to address the issues should not preclude Ms Kavanagh from continuing a legitimate process and I choose to proceed as advised.

[5] Ms Kavanagh's costs amount to \$761.56 including the Authority's filing fee and she seeks full reimbursement.

[6] Normally the Authority will use a daily tariff when addressing a costs claim and with the current starting point being \$4,500 for an investigation's first day.³ From there adjustment may be made depending on the circumstances though the award is normally considered a contribution and full reimbursement is a rare event limited to occurrences of *flagrant misconduct*.⁴

[7] Having considered the file I consider Rainbow Power's conduct to have crossed the threshold required for an award of indemnity costs. Its behaviour has been contemptuous with respect to both the compliance application and, more importantly, its obligations under the mediated settlement which forced Ms Kavanagh to make the application and incur costs she should not have had to shoulder.

[8] I also note the normal tariff. Notwithstanding the fact the compliance claim was dealt with on the papers it had to be prepared for as if it would be defended. In such circumstances costs that equate to an input less than that considered reasonable for a sixth of a day must be regarded as both modest and reasonable. I see no reason for penalising Ms Kavanagh for being realistic with both her costs and her claim.

Conclusion and orders

[9] For the above reasons I order Rainbow Power Limited pay Orla Kavanagh \$761.56 (seven hundred and sixty one dollars and fifty six cents) as a contribution toward the costs she incurred in pursuing her claim.

Michael Loftus
Member of the Employment Relations Authority

³ refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808

⁴ *Westpac Banking Corporation* [2009] 3 NZLR 400