

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 460
3136501

BETWEEN STACEY KEREAMA
 Applicant

AND HARBAR LIMITED
 Respondent

Member of Authority: Peter van Keulen

Representatives: Applicant in person
 Rick Velenski for the Respondent

Investigation Meeting: On the papers

Submissions Received: 30 August 2022 from the Applicant
 24 August 2022 from the Respondent

Date of Determination: 15 September 2022

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 3 August 2022,¹ I found that Stacey Kereama had not been dismissed by Harbar Limited and I dismissed Ms Kereama's claims. I also reserved costs so

¹ *Stacey Kereama v Harbar Limited* [2022] NZERA 361.

that the parties could try to agree costs. It appears that the parties have been unable to agree costs and Harbar now seeks an order for costs.

Application for costs

[2] Rick Velenski for Harbar seeks an award of costs of \$4,500.00.

[3] Mr Velenski says that whilst Harbar did not have a representative at the investigation meeting it had engaged a lawyer on other aspects of the claim. That lawyer was involved in drafting the statement in reply, attending the Authority's case management conferences and assisting Harbar with the written evidence. Harbar has been invoiced fees in the sum of \$5,147.00 plus GST. On this basis Mr Velenski seeks an order for payment of \$4,500.00, which is the amount payable under the daily tariff for a one-day investigation meeting.

[4] Ms Kereama says she is unable to pay any amount of costs ordered.

Analysis

Costs in the Authority

[5] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* and other relevant Employment Court and Court of Appeal decisions.² I have applied these principles when determining this costs application.

Costs for Harbar

[6] The starting point is that costs should follow the event; as Harbar was successful in defending Ms Kereama's claim it is entitled to an award of cost.

² *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808; *Blue Star Print Group (NZ) Ltd v. Mitchell* [2010] NZCA 385; *Booth v. Big Kahuna Holdings Ltd* [2015] NZEmpC 4; *Stevens v. Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 28; *Davide Fagotti v. Acme & Co Ltd* [2015] NZEmpC 135; and *GSTech Limited v A Labour Inspector of MBIE* [2018] NZEmpC 127.

Applying the daily tariff

[7] The next question is whether I should follow the normal practice of the Authority when setting costs, which is applying a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff. The current daily tariff is \$4,500.00 for the first day of an investigation meeting and \$3,500.00 for every subsequent day of an investigation meeting.

[8] In this case I will apply the daily tariff but it needs to be adjusted.

Adjusting the daily tariff

[9] There are three reasons for adjusting the daily tariff in this case:

- (a) The investigation meeting only took part of one day, so only part of the daily tariff should be awarded.
- (b) The lawyer engaged by Harbar did not attend the investigation meeting.
- (c) Ms Kereama's impecuniosity.

[10] The investigation meeting for this matter took just over one hour. On this basis the daily tariff should be applied to one quarter of one day, that is \$1,125.00.

[11] This amount should then be reduced for the two other factors:

- (a) The daily tariff is applied on the basis that costs incurred apply to all aspects of the process, i.e., the daily tariff is an acceptable level of contribution incurred for legal fees for a one-day investigation meeting which includes all preparation and attendance at the investigation meeting. As Harbar did not incur any legal costs in relation to attendance at the investigation meeting, the daily tariff should be reduced to reflect this.

(b) That Ms Kereama will be unable to pay any cost award is relevant and justifies a reduction in the daily tariff. However, I acknowledge that a reduction in costs because of a party's impecuniosity should not be applied without some balance; that is the principles of equity and good conscience must also account for the countervailing interests of the successful party and broader public policy considerations.³ This means a total reduction is not appropriate, Ms Kereama must pay something toward Harbar's costs notwithstanding her financial position.

Conclusion

[12] In all of the circumstances I consider that the daily tariff should be reduced to \$600.00.

Order

[13] Ms Kereama is to pay \$600.00 to Harbar, within 28 days of the date of this determination, as a contribution to its costs in this matter.

Peter van Keulen
Member of the Employment Relations Authority

³ *Koia v Attorney-General in Respect of the Chief Executive of the Ministry of Justice (No 2)* [2004] 2 ERNZ 274; *Merchant v Chief Executive of the Department of Corrections* [2009] ERNZ 108 (EmpC); and *Tomo v Checkmate Precision Cutting Tools Ltd* [2015] NZEmpC 2.