



right to pursue). This led to another Consent Determination of 9 March 2023, arising out of a case management conference that granted Mr Lee a compliance order pursuant to s 137(2) Employment Relations Act 2000 (the Act) that Mr Blake meet his obligations set out in the earlier consent determination by way of four specified sum instalments. The issue of costs was reserved.<sup>2</sup>

[3] Unfortunately, Mr Blake only made the first two payments and signalled to Mr Lee that he would not meet the remaining two payments until he was paid by a third party. The matter returned to the Authority for a brief investigation meeting on 25 July 2023, that after briefly hearing evidence from the parties was adjourned. The adjournment resulted in the parties' resolving matters except for costs.

### **The application for costs**

[4] Mr Lee's counsel seeks costs of \$4,500.00 and disbursements (the filing fee) for attendances to settlement efforts including the investigation meeting. In seeking this uplift in costs, Mr Lee's counsel cited what she considered unnecessary delaying tactics that put her client to extra cost due to the failure of Mr Blake to meet commitments in a timely manner.

[5] Mr Blake did not provide a submission other than to indicate he was impecunious but he did not provide any documentation as directed on his financial outgoings and liabilities.

### **Assessment**

#### *The Authority's costs approach*

[6] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000.

#### *Costs for Mr Lee*

[7] A starting point is that costs normally follow the event and as Mr Lee was successful in obtaining his compliance order an award of costs is appropriate.

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<sup>2</sup> *Oliver Lee v David Blake* [2023] NZERA 122.

### *Applying the daily rate*

[8] The Authority's approach is to apply a notional daily rate and only adjust that rate if persuaded that circumstances or other factors require an upward or downward adjustment.<sup>3</sup> The current daily rate is \$4,500 for the first day of an investigation meeting.

### *Adjusting the daily rate*

[9] Given the investigation meeting was brief, lasting around two hours, it is appropriate to apply a proportion of the normal daily rate but I accept an upward adjustment is warranted as Mr Blake unnecessarily delayed matters before a settlement was reached, causing Mr Lee to incur further legal costs.

### *Conclusion*

[10] An uplift to a proportion of the daily rate is to be applied and in all the circumstances, I fix that at \$2,500.

### **Order**

[11] David Blake is to pay Oliver Lee a contribution to his legal costs in the amount of \$2,500 and \$71.55 as reimbursement of Mr Lee's Authority filing fee.

David G Beck  
Member of the Employment Relations Authority

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<sup>3</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)