



### **Submissions as to costs**

[3] A memorandum as to costs was filed on behalf of Sran Trading seeking the amount of \$4,968.50 in costs. Following a request for details as to costs, by the Authority, counsel for Sran Trading provided a “partial invoice”, based on a “fixed fee”. The fixed fee appears to have been based on the Authority’s daily tariff of \$4500.

[4] The applicant resists the application for costs, claiming she does not have the ability to pay.

### **Costs determination**

[5] The Authority’s power to award costs against a party is set out in clause 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which provides as follows:

15. **Power to award costs**
  - (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
  - (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such a manner as it thinks reasonable.

[6] The power is discretionary and exercised depending on the circumstances of each case, in accordance with established principles.<sup>2</sup>

[7] The principles provide that when assessing costs they generally follow the event, should be modest and are not to be used to punish or express disapproval of the unsuccessful party’s conduct. However, conduct which increased costs unnecessarily may be taken into account in uplifting or reducing a costs award. The Authority will assess whether a party’s costs are unnecessary or unreasonable and will take into account “without prejudice” offers.

### **Authority’s daily tariff**

[8] The starting point in awarding costs in the Authority where an investigation meeting has taken place is the daily tariff, which stands at \$4,500 for the first day and \$3,500 for each subsequent day. The daily tariff may be adjusted upwards or downwards by the Authority depending on the circumstances of the case.

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<sup>2</sup> *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808.

**Assessment of costs in this case**

[9] Neither party was represented at the Authority's case management conference and neither provided the Authority with witness statements. The parties relied on the statement of problem, statement of reply and documents filed by each of them. Up until the investigation meeting, Sran Trading was not represented by counsel. At the Authority's investigation meeting Sran Trading was represented. Ms Mason was not.

[10] The starting point when assessing costs, is that costs follow the event. Sran Trading was successful in defending Ms Mason's claim. The investigation meeting was completed in half a day. Therefore, the starting point for the assessment of costs is half of the daily tariff of \$4500, which amounts to \$2250.

[11] Counsel for Sran Trading says Ms Mason's claim lacked merit and a "without prejudice offer" of \$2,500 was made by it to Ms Mason to avoid further costs. The offer was made by Sran Trading 6 days before the Authority's investigation meeting. Ms Mason was given less than 24 hours to accept it. By that stage, the parties had filed all the necessary information.

[12] Ms Mason says she cannot pay the costs being sought. Ms Mason is a solo parent raising two children. Ms Mason has provided the Authority with details of her financial situation, which in my view support her inability to pay costs at the level sought.

[13] I consider the level of costs being sought on behalf of Sran Trading to be too high. Costs should be reasonable and awards modest. Costs are not to be used as a punishment. The parties themselves prepared the statement of problem and the statement in reply. Neither party filed witness statements. The investigation meeting was short. Counsel for Sran Trading has not broken down the invoice for services provided. The information provided to the Authority was that a number of hours was spent on preparing Sran Trading's defence. No detail was provided regarding what those hours were spent on.

[14] I consider a contribution by Ms Mason to Sran Trading of \$1125 towards its costs to be appropriate, in the circumstances.

**Order**

[15] I order Ms Mason to pay Sran Trading the sum of \$1125 towards its costs. These costs are to be paid by Ms Mason within twenty one days of the date of this determination.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**