

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 220
3122052

BETWEEN	KYLIE MILLS Applicant
AND	CLOVERBLOOM COMPANY LIMITED Respondent

Member of Authority: Sarah Kennedy
Representatives: Mike Harrison, advocate for the Applicant
Submissions received: 25 March 2022 from the Applicant
Determination: 27 May 2022

COSTS DETERMINATION OF THE AUTHORITY

Costs

[1] The applicant filed an application for an order for payment of costs that she incurred in pursuing a personal grievance against the respondent, Cloverbloom Company Limited (Cloverbloom). In my determination dated 25 February 2022, the applicant succeeded in her claim for an unjustified dismissal and lost wages.¹

[2] Cloverbloom did not provide submissions on costs but responded briefly to the Authority on receipt of the application for costs. The Authority granted Cloverbloom a further two-week extension to give the respondent more time to respond to the application, but no submissions were received.

¹ *Kylie Mills v Cloverbloom Company Limited* [2022] NZERA 59.

[3] The Authority's jurisdiction to order a party to pay reasonable costs and expenses is exercised by applying some well-established principles to the particular circumstances of the case.² Those principles recognise that a successful party should receive a contribution to costs reasonably incurred in reaching that result; costs are discretionary and should generally be modest and may not be used to punish an unsuccessful party; the nature of the case may allow for an order that costs lie where they fall; and the Authority may use a notional 'daily rate' or 'tariff' as a starting point to assess costs.

[4] Undue rigidity in applying that tariff is avoided by upward or downward adjustments appropriate to the particular case. Those adjustments may account for a liable party's means to pay costs, the preparation required in particularly complex matters and where conduct of parties has unnecessarily increased costs.³

[5] The Authority's current tariff for a one-day investigation meeting is \$4,500.00. This amount is taken as an appropriate starting point for assessing a reasonable contribution to the costs incurred by a party in preparing for and taking part in an investigation meeting.

Assessment

[6] The investigation meeting was held over a half day and Cloverbloom's director failed to attend. It is submitted that the total cost to Ms Mills in having representation was \$8460.00, inclusive of the filing fee.

[7] Weighing the relevant principles referred to above, having been successful, Ms Mills is entitled a contribution towards her costs.

[8] I consider that costs based upon one half day's hearing time of \$2,250.00 and the filing fee of \$75.56 is appropriate.

² Employment Relations Act 2000, Schedule 2, clause 15 and *PBO Ltd v Da Cruz* [2005] 1 ERZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].

³ Above n2.

Order

[9] Cloverbloom Company Limited is ordered to pay Kylie Mills the sum of \$2,250.00 as a contribution towards her costs together with the filing fee of \$71.56 within 28 days of this determination.

Sarah Kennedy
Member of the Employment Relations Authority