

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2022] NZERA 518  
3117212

BETWEEN                      MAGDY MISHRIKI  
   Applicant  
  
AND                                FONO TRUST  
   Respondent

Member of Authority:        Geoff O’Sullivan  
  
Representatives:              Anthony Drake and Rosemary Judd, counsel for the  
   Applicant  
   John Kahukiwa, counsel for the Respondent  
  
Submissions Received:        4 October 2022 from the Applicant  
   20 September 2022 from the Respondent  
  
Date of Determination:        11 October 2022

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     On 7 September 2022 I issued a determination concluding the Authority had no jurisdiction to hear Mr Mishriki’s claims because he was not an employee. Costs were reserved and the parties were encouraged to resolve this matter between them. They have been unable to resolve the matter and the Fono Trust now seeks a contribution to its costs.

[2]     The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks reasonable.<sup>1</sup> The principles applying to costs are well settled and do not require repeating.

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<sup>1</sup>     The Employment Relations Act 2000, Schedule 2, clause 15.

[3] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day. The investigation meeting took one day.

### **The parties' submissions**

[4] The Fono Trust as the successful party acknowledges that the starting point in determining costs is the notional tariff of \$4,500. However, it argues for an uplift. The basis for this is that Mr Mishriki filed an amended statement of claim following mediation. It seeks a further \$1,000 for the additional effort and cost it says it occurred as a result.

[5] Mr Drake submits on behalf of Mr Mishriki that there is no basis for an uplift. He says that the amendments to the statement of problem related only to one aspect of the claim for employment status, being the formation of the relationship and the parties' intentions.

### **Conclusion and orders**

[6] There is no basis on which the Authority should depart from the notional daily tariff in this case. I order Dr Magdy Mishriki to pay the Fono Trust a sum of \$4,500 as a contribution towards the costs it incurred in defending the claims.

**Geoff O'Sullivan**  
**Member of the Employment Relations Authority**