

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2024] NZERA 165
3160044

BETWEEN NLC
Applicant

AND TAINUI HOME TRUST
BOARD
Respondent

Member of Authority: Rowan Anderson

Representatives: John Wood, advocate for the Applicant
Troy Wano, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 26 February 2024 from Applicant
No submissions from Respondent

Determination: 21 March 2024

COSTS DETERMINATION OF THE AUTHORITY

Background and submissions

[1] On 12 February 2024 the Authority issued a determination¹ in which I found that NLC was unjustifiably dismissed from their employment, unjustifiably disadvantaged in their employment, and that they were entitled to compensation. I also found that NLC was entitled to payment in relation to various entitlements.

[2] Costs were reserved. The parties have not been able to agree on costs, and NLC now asks the Authority for orders as to the costs they incurred in pursuing their claims against Tainui Home Trust Board (Tainui).

¹ *NLC v Tainui Home Trust Board* [2024] NZERA 79.

[3] NLC seeks a total contribution towards their costs of \$11,416 based on the daily tariff approach adopted by the Authority for a two and one-third day investigation meeting, with an additional allowance of \$2,250 (said to be half a day) for the preparation of written submissions following the investigation meeting. NLC submitted that their total costs were \$14,576.25.

[4] No submissions were received from Tainui as to the issue of costs.

Costs principles

[5] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.²

[6] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that Calderbank offers may be taken into account, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.³

[7] The daily tariff is usually taken as a starting point,⁴ although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

Consideration

[8] NLC was successful in pursuing their claims and it is appropriate that costs follow the event.

[9] The substantive proceeding involved the setting down of a two-day investigation meeting on 30 and 31 August 2022. Those two days were fully utilised, and the investigation meeting resumed for two hours on 19 September 2022 to hear from one further witness. Additionally, the parties lodged written submissions in lieu of providing oral submissions.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

⁴ Employment Relations Authority Practice Direction, August 2023, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>

[10] I consider the appropriate starting point for daily tariff approach would see a contribution of \$4,500 for the first, \$3,500 for the second day, and \$1,750 for a further half day including preparation of the written submissions.

Orders

[11] I order Tainui Home Trust Board to pay NLC, within 28 days, the sum of \$9,750.00 as a contribution towards the costs NLC incurred in pursuing their claims.

Rowan Anderson
Member of the Employment Relations Authority