

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2023] NZERA 588
3203799

BETWEEN OIT
 Applicant

AND HKL
 Respondent

Member of Authority: Peter van Keulen

Representatives: Kevin Mclaughlan, advocate for the Applicant
 Wendy Larsen, representative for the Respondent

Investigation Meeting: On the papers

Submissions Received: 25 September 2023 from the Applicant
 11 September 2023 from the Respondent

Date of Determination: 11 October 2023

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 30 August 2023, I found that HKL had not unjustifiably dismissed or unjustifiably disadvantaged OIT.¹

[2] In my determination I reserved costs so that the parties could try to agree costs. The parties were unable to agree and now HKL seeks an order for costs.

¹ *OIT v HKL* [2023] NZERA 488.

Application for costs

[3] HKL seeks an award of costs of \$13,535.84 based on the actual costs it says it incurred.

[4] OIT accepts that costs should be awarded to HKL as it was successful in defending OIT's claims, but it says that the award should be in line with the daily tariff applied for a half day investigation meeting, reduced for OIT not opposing HKL's application for non-publication orders.

Analysis

Costs in the Authority

[5] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.²

Costs for HKL

[6] The starting point is that costs should follow the event. As HKL was successful it is entitled to an award of costs.

Applying the daily tariff

[7] The normal practice of the Authority when setting costs, is to apply a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff.

[8] There is no basis to depart from this normal practice and it is the basis on which I will determine costs in this matter.

[9] The investigation meeting took one half day and whilst HKL suggests more time should be attributed to the meeting as it effectively ruled out the whole day for the

² For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

participants this is not a basis on which the time is calculated. The starting point for costs is \$2,250.00 – based on the current daily tariff of \$4,500.00 for the first day of an investigation meeting.

Adjusting the daily tariff

[10] From this point I need to consider whether the daily tariff amount should be adjusted.

[11] I am not satisfied that any of the matters raised by HKL justify an increase in the daily tariff.

[12] Similarly, I am not satisfied that there is a basis to reduce the daily tariff for the reasons set out by OIT.

[13] There is no reason to adjust the daily tariff in this matter.

GST

[14] It was unclear whether HKL was seeking GST on its costs award. In any event, the Authority's approach to the addition of GST on costs awards is that the daily tariff is an all-inclusive, GST neutral figure. Therefore, GST is not awarded on any award of costs.

Order

[15] OIT is to pay HKL \$2,250.00 as a contribution to its costs in this matter. I make no additional orders about a timeframe for total payment or instalments over time at this stage. I leave it to the parties in the first instance to negotiate a payment plan and if that fails then they can come back to the Authority for assistance with setting payments, by way of a variation to my order.

Peter van Keulen
Member of the Employment Relations Authority