

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
OTAUTAHI ROHE**

[2024] NZERA 263
3226500

BETWEEN NATASHA OSWALD
 Applicant

AND PRIDEWEAR LIMITED
 Respondent

Member of Authority: Claire English

Representatives: Alex Kersjes, advocate for the Applicant
 No appearance for the Respondent

Submissions received: 3 April 2024 from Applicant
 No submissions from Respondent

Determination: 6 May 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] On 11 March 2024¹, the Authority issued a determination in this matter, finding that the applicant Ms Oswald had been unjustifiably dismissed, and awarding the sums of \$7,579.00 gross as compensation for lost remuneration and \$18,000 without deduction as compensation for hurt and humiliation.

[2] In that determination, the parties were encouraged to resolve any issue of costs between them, and the Authority made reference to its usual practice of applying the daily tariff to determine costs.

¹ [2024] NZERA 142

[3] The parties have not been able to resolve costs between themselves, and the applicant has filed a memorandum accordingly. This has been served on Pridewear Limited, and time was provided for a response. When none was received, the Authority followed up with Pridewear's director, Ms Neela Patel. As no response has been received, I will determine the application for costs on the basis of the information that is before me.

Relevant Background

[4] The applicant was the successful party, and is entitled to a contribution to her costs.

[5] The investigation meeting in this matter ran from 9.30 am to 1.30 pm, and was held in person. The applicant attended together with her representative and a witness, and Ms Patel appeared for the respondent. Both parties provided further information and written submissions following the investigation meeting.

[6] In the present case, the applicant seeks a costs award of \$11,150, plus the filing fee of \$71.55.

[7] This is an uplift on the daily tariff. The applicant submits that:

- a. The starting point should be the daily tariff of \$4,500, with a further quarter day to recognise the need for subsequent engagement and submissions, being \$5,625.00.
- b. In addition, the applicant seeks an uplift of 50% on this amount, e.g. a further \$2,812.50, to account for a Calderbank offer rejected by the respondent;
- c. The applicant seeks a 50% uplift, e.g. a further \$2,812.50, to account for the respondent's approach and conduct of the proceedings, which are described as nonsensical and irrelevant, and the respondent's failures to comply with the Authority's directions, which have required additional time.

Principles

[8] The power of the Authority to award costs is contained in cl 15 of schedule 2 of the Employment Relations Act 2000 (the Act).

[9] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days².

[10] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[11] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*³ as confirmed in *Fagotti v Acme and Co Limited*⁴. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful party's conduct.

[12] In the present case, the correct starting point for an assessment of costs is the tariff for a one day investigation meeting, e.g. \$4,500. As I have noted, the investigation meeting ran for approximately half a day concluding at 1.30 pm. However, it is appropriate to "round up" to a full day's tariff given the subsequent written submissions and documents provided, and that the matter was set down for two full days. Setting the starting point at a full day's tariff recognises this necessary time commitment.

[13] If the respondent had accepted the Calderbank offer from the applicant to settle for a total of \$14,500 including costs, there is no doubt that the respondent would have been placed in a better position. The respondent has provided no reason for its refusal

² For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

³ [2005] 1 ERNZ 808.

⁴ [2015] NZEmpC 135 at 114.

to accept that offer. It is appropriate to recognise this, and on balance, an allowance equivalent to half a day should be made, being a further sum of \$2,250.

[14] The respondent failed to file a statement of reply, any witness statement, or indeed any response to the applicant's costs application. This has delayed the proceedings, but not to the extent that an uplift as requested by the applicant is warranted. Bearing in mind that costs are to be modest and uplifts have already been made, no further adjustments are required.

[15] Finally, the applicant having been successful is entitled to the return of the filing fee of \$71.55.

Orders

[16] Pridewear Limited is ordered to pay to Natasha Oswald within 28 days of the date of this determination:

- a. the sum of \$6,750.00 as a contribution to costs;
- b. plus the sum of \$71.55 as reimbursement of the filing fee.

Claire English
Member of the Employment Relations Authority