



[4] Mr Hardy has challenged the Authority's determination to the Employment Court.

### **Applicant's submissions (original and reply)**

[5] On behalf of Precision Mr Davis seeks costs in the sum of \$8000 which is the daily tariff for the two-day investigation meeting.

[6] In light of cost submissions lodged on behalf of Mr Hardy the Authority granted leave for Mr Davis to lodge submissions in reply as to whether it was appropriate to fix costs at this point.

[7] Mr Davis submits it is. He refers to the fact that it was Mr Hardy who sought to have the issue of liability determined before a separate investigation, if necessary, for damages. Mr Davis submits that liability was "staunchly opposed" and there were two full days of investigation.<sup>3</sup>

[8] Mr Davis directed the Authority to an Employment Court judgment in *Clear v Waikato District Health Board* where the Employment Court gave an indication that costs would be awarded where liability had been established but remedies were yet to be determined.<sup>4</sup>

[9] Mr Davis submits that it would be inefficient and undesirable for the Authority to determine the costs issues at a date in the future.<sup>5</sup>

### **Submissions from the Respondent**

[10] Ms Keir's primary submission is that it is not appropriate to fix costs at this point because the proceedings are not complete and the determination only relates to the issue of liability. She submits that there is material that in the ordinary course of the matter would be appropriate for the Authority to consider before fixing costs. Further, that it is not possible to conclude that Precision has been the successful party because the consequence of liability must also inform the evaluation of success.

[11] Ms Keir asks that the issue of costs in the Authority be reserved until the challenge is resolved and costs be dealt with after that time.

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<sup>3</sup> Directions of the Authority 9 May 2023.

<sup>4</sup> *Clear v Waikato District Health Board* [2011] NZEmpC 48 at [59].

<sup>5</sup> *Head v Chief Executive of the Inland Revenue Department* [2021] NZEmpC 98 at [24].

[12] She submits that if costs were to be considered there are features of this matter that indicate the conduct of Precision unnecessarily lengthened the proceedings or increased the costs incurred. Ms Keir submits that it would be appropriate for the Authority to depart from the daily tariff.

### **Analysis and conclusions**

[13] The Employment Court did not consider it inappropriate to determine costs in circumstances where there had been a finding of liability only in *Clear*.<sup>6</sup> This was notwithstanding a submission that because of certain matters the Court could not see at that time, all issues as to costs should be left until after the delivery of the judgment on remedies.

[14] As the Employment Court stated in *Head* it is preferable to resolve costs within reasonable proximity to when the matter is heard.<sup>7</sup> Not to do so in this matter would mean the determination as to costs would be unduly delayed. It is also helpful for the Employment Court to have a determination as to costs to consider if necessary.

[15] It is appropriate to fix costs for these reasons in this matter.

[16] Ms Keir submits that Precision unnecessarily lengthened the proceedings or increased the costs incurred by the parties. There is reference to amended pleadings and issues with disclosure. Those matters have to be assessed alongside the complexity of the matter. Precision seeks the daily tariff and not an uplift. There were two very full investigation meeting days with the meeting on the second day commencing at 9.30am and concluding at 6.15 pm. Written submissions were then timetabled and lengthy submissions were received.

[17] In the exercise of my discretion as to costs I do not conclude there are reasons to reduce the daily tariff for the two days. The sum of \$8000 is a fair and reasonable award for costs.

[18] From the administration file the Authority is aware that hearing fees in the sum of \$306.66 (GST inclusive) have been invoiced to Precision and a filing fee of \$71.55

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<sup>6</sup> Above n 4.

<sup>7</sup> Above n 5.

has been incurred. It is appropriate to order that these amounts are reimbursed as disbursements.

**Orders made**

[19] Paul Hardy is ordered to pay to Precision Solutions Limited the sum of \$8000 being costs and disbursements in the sum of \$378.21 being the filing fee and hearing fees.

Helen Doyle  
Member of the Employment Relations Authority