

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 247
3229320

BETWEEN KELLY REID
 Applicant

AND SEDGWICK
 NEW ZEALAND LIMITED
 Respondent

Member of Authority: Peter Fuiava

Representatives: Applicant in person.
 Scott Alcock, counsel for the Respondent.

Submissions received: 26 April 2024 from the Applicant
 8 March 2024 from the Respondent

Determination: 30 April 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination dated 28 February 2024,¹ I dismissed a claim brought by Kelly Reid who alleged that his former employer, Sedgwick New Zealand Limited (Sedgwick or the company), had breached a purely verbal agreement made by its chief executive officer.

[2] The question of costs was reserved and if the parties were not able to resolve matters themselves, timetabling directions were made for the filing of memoranda. An extension was granted to Mr Reid to provide his costs submissions which while brief were to the point.

What are the parties positions concerning costs?

[3] The company seeks costs for a one-day investigation. Mr Reid submits that he has incurred costs himself comprising \$383.14 for copying and binding and \$415 for professional consultation. I note also that Mr Reid will have paid a filing fee of \$71.55.

¹ *Kelly Reid v Sedgwick New Zealand Limited* [2024] NZERA 117.

What is the Authority's approach to costs?

[4] The Authority has the power under clause 15 of Schedule 2 of the Employment Relations Act 2000 to award costs. However, the discretion to order a party to pay costs to another party must be exercised in accordance with principle. The principles and the Authority's approach to costs are well settled and are outlined in its practice note which is publicly available.² Further information on the Authority's approach to costs may also be found in its Practice Direction.³

[5] Informing the Authority's approach to costs is relevant caselaw such as *PBO v Da Cruz* in which the Employment Court observed that, since its inception, the Authority has held to some basic tenets concerning costs which relevantly include:⁴

- That costs generally follow the event.
- That awards will be modest.
- That frequently costs are judged against a notional daily rate.

Should costs be awarded?

[6] The general principle is that the successful party should be awarded costs from the other (unsuccessful) party. This is also known as 'costs follow the event'. Having successfully defended itself against Mr Reid's claim, Sedgwick was the successful party and it is appropriate that Mr Reid make a contribution towards its actual and reasonable costs notwithstanding that he has incurred costs himself.

[7] As noted in the substantive determination at [6], the investigation meeting was initially scheduled for 6 December 2023 but was adjourned through no fault of either party. The investigation meeting was held 13 February 2024 and took one day. Applying the Authority's notional tariff approach to a one-day fixture results in a starting point for costs of \$4,500.

[8] Sedgwick's costs memorandum records a total costs claim of \$5,440 which does not include the travel time, flights and accommodation costs for the aborted first hearing. The company seeks only the tariff of \$4,500 against Mr Reid.

² www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

³ www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf

⁴ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 at [44].

[9] The Authority's notional tariff reflects its modest approach to costs. I have afforded Mr Reid an opportunity to respond to Sedgwick's costs submissions and while I appreciate that his preference is to have his liability reduced in some way, doing so would go against the well-settled and understood principle that costs follow the event. I see no reason why that should not be the case here.

Order

[10] The Authority orders Kelly Reid to pay Sedgwick New Zealand Limited \$4,500 within 30 days of this costs determination as a contribution towards the company's costs in successfully defending itself against his claim.

Peter Fuiava
Member of the Employment Relations Authority