



- a. \$4,500 for the day's hearing;
- b. \$500 for subpoenaing PACT's manager Ms Cotogni;
- c. \$1,750 for the Applicant's Closing Submissions and the Reply Statement;
- d. \$71.56 for the filing fee<sup>1</sup>.

[5] PACT Group's position is that it is prepared to pay the usual daily tariff.

### **Principles**

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

[7] 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*<sup>2</sup> as confirmed in *Fagotti v Acme and Co Limited*<sup>3</sup>. 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 parties conduct.

### **Daily Tariff is the starting point**

[8] 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 days<sup>4</sup>.

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

[10] The investigation meeting in this matter was for one day, and was held in person. Both parties attended together with their representatives, and witnesses. Closing submissions were filed in writing at a later date. There was no conduct by either party that adversely affected the length or conduct of the hearing.

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<sup>1</sup> As described in the applicant's costs submissions of 30 November 2022.

<sup>2</sup> [2005] 1 ERNZ 808.

<sup>3</sup> [2015] NZEmpC 135 at 114.

<sup>4</sup> For further information about the factors considered in assessing costs, see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)

[11] In saying this, I acknowledge the comment on behalf of PACT Group that time was spent at the start of the investigation meeting confirming the state of health of Ms Robinson's representative. However, my view is that it was necessary to take this time, and that it was not significant in the context of this matter.

[12] This means that the usual starting point is the daily tariff for one day (being \$4,500), plus a modest allowance for the additional time and cost of filing submissions at a later date.

[13] My view is that the allowance for filing of submissions would be 25% of the daily tariff, that is, \$1,125. This is less than the uplifts requested by the applicant.

[14] In arriving at this amount, I take into account that no invoices have been provided by Ms Robinson<sup>5</sup>, the costs submissions on her behalf refer to steps that would not normally be covered by a costs award (such as attendance at mediation and at disciplinary meetings), and that the costings set out on her behalf appear to be premised on the idea that she should recover the costs of her representation on a full indemnity basis.

[15] Ms Robinson can expect to receive a contribution to her costs as a successful party, but these are to be assessed following the principals set out above and as summarised in the Authority's Practice Note, and are to be a contribution to costs reasonably and actually incurred, rather than in the nature of a reimbursement.

[16] This is particularly relevant in respect of the sum of \$500 claimed by Ms Robinson "for subpoenaing PACTS's manager Ms Cotogni". It is submitted that Ms Robinson "will be charged a further \$500 for the additional work, as the ERA required the Applicant rather than the Authority to subpoena Ms Christina Cotogni..."<sup>6</sup> Ms Robinson requested that the Authority issue a summons to Ms Cotogni on 29 June 2022, on the basis that Ms Cotogni was and remained an employee of the respondent. This request was repeated on 22 August 2022, together with confirmation that Ms Robinson's representative had been in contact with Ms Cotogni on the matter, and Ms

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<sup>5</sup> I note that the costs submissions provided by the applicant's representative repeatedly used the phrase "will be billed", implying that no invoices existed.

<sup>6</sup> At paragraph 6 on page 1 of the costs submissions provided by the applicant's representative.

Cotogni required a summons. The Authority granted the summons as requested by the applicant.

[17] For the avoidance of doubt, Ms Cotogni was not summonsed to appear by the Authority's own motion. It is unexceptional for a party to seek a summons for an employed witness, however, this is not a ground for an uplift in a costs award. Ms Robinson made the decision to summons Ms Cotogni, and any additional representative costs arising from this are a matter between Ms Robinson and her representative.

[18] Taking all these factors into account, my view remains that an appropriate costs award in this matter is an award based on the daily tariff, eg \$4,500 plus an allowance of one quarter day, or \$1,125 for costs of subsequent filing of written submissions.

[19] In addition, the applicant has claimed for reimbursement of the filing fee of \$71.56. As the successful party, the applicant is also entitled to receive this sum.

### **Orders**

[20] PACT Group is to pay to Carey Robinson within 28 days of the date of this determination (unless ordered otherwise by the Court<sup>7</sup>) the sum of \$5,696.56 as a contribution to costs, which includes the reimbursement of the filing fee.

Claire English  
Member of the Employment Relations Authority

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<sup>7</sup> I have been advised that a stay may be applied for in the Court.