



[3] Costs were reserved with the parties encouraged to resolve any issue of costs between themselves. They have not done so and Mr Shadbolt applies for costs. Tin Men opposes that application.

[4] The costs question became entwined with Tin Men's challenge of the first determination and application for a stay. After initial indications that no stay application had been sought from the Employment Court and a question whether material filed in the Authority might be seen as seeking a stay from the Authority, both parties confirmed that a stay application had been lodged with the Court. This of itself does not prevent the Authority from finalising its costs question. If the company is dissatisfied with the Authority's costs outcome it could amend its stay application and its challenge application to incorporate the costs determination.

[5] Therefore I proceed to determine costs in the Authority, taking into account submissions and other documents provided on behalf of Mr Shadbolt and Tin Men regarding costs.

#### **Submissions for Mr Shadbolt**

[6] Mr Shadbolt argues that as he was the successful party he is entitled to a contribution towards his costs.

[7] An invoice for representation costs of \$15,564.35 (incl GST) is provided.

[8] A full day's tariff is sought, being \$4,500, as Mr Shadbolt had no other way to obtain the result in the first determination. No deduction from costs is said to be warranted for the contribution by Mr Shadbolt which resulted in the reduction of the remedies he would otherwise have received.

#### **Submissions for Tin Men**

[9] Broadly speaking Tin Men is opposed to paying costs. It says it understands Mr Shadbolt's representatives act on a no win, no fee contingency basis. Thus it is not acceptable to require it to make payment while it is still awaiting a hearing date in the Court.

[10] Tin Men describes itself as a small, family-owned business company which cannot afford to make payments that it believes are unfair.

## Costs principles

[11] The Authority has the power to award costs.<sup>2</sup> This power is discretionary and is to be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* the principles guiding the Authority's approach include:

- the statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction
- equity and good conscience is to be considered on a case by case basis
- costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award
- costs generally follow the event
- awards will be modest
- frequently costs are based on a notional daily tariff.<sup>3</sup>

## Costs discussion

[1] The starting point is the notional daily tariff amount. The investigation meeting took one day, with the tariff being \$4,500 for that first day.

[12] An award of costs to Mr Shadbolt is warranted as he succeeded in establishing a grievance. There is no evidence he was able to obtain the same result in any other way, thus any contribution by him to the situation giving rise to the grievance is not relevant. That contribution has already been taken into account in the reduction of the quantum of remedies awarded. There is no evidence provided for Tin Men regarding the basis on which Mr Shadbolt's representatives charge their fees and an invoice has been presented showing an amount he has been charged.

[13] Mr Shadbolt should receive the tariff and is also entitled to be reimbursed for the Authority's filing fee.

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, cl 15.

<sup>3</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

## **Orders**

[14] Tin Men Ltd is to pay Rob Shadbolt the following amounts within 28 days of the date of this determination:

- \$4,500.00 as a contribution to his costs; and
- \$71.56 for the Authority's filing fee.

Nicola Craig  
Member of the Employment Relations Authority