



[5] ESL submits that an award of \$1500 would be “*acceptable*” as the company sought to settle the matter prior to determination, albeit for a lesser amount than subsequently awarded to Ms Shale.

[6] Applying the principles on costs summarised in *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808 I consider that a daily notional rate may properly be applied to this case, with costs to Ms Shale to follow the event of the overall success of her case. No reduction of the reasonable contribution to her costs is necessary to account for any settlement offer as the adjudicated outcome was greater.

[7] A full day rate of \$2500 is appropriate as the investigation included a prior interview with ESL director Nigel Loy (taped and provided to Ms Shale’s counsel). While the actual investigation meeting itself did not take the whole day, the total hours of investigation were akin to a full day hearing.

[8] Ms Shale was also put to the expense of seeking and serving a summons on her previous ESL supervisor who was an important witness. A further \$500 is allowed in costs and expenses for that.

[9] Ms Shale, through counsel, has also applied for an order joining Mr Loy to any order for costs. She relies on the Employment Court’s decision in *Orakei Group (2007) Limited v Kapadia & Ors* (unreported, AC 37/08, 23 September 2008) for the basis of such an order.

[10] I decline to make the order sought. There is not the same level of “*substantial evidence*” for it that was before the Court in the *Orakei Group* case. The present ‘evidence’ offered consists of an email from counsel asserting that ESL has committed an act of insolvency and a hearsay report of a conversation with Mr Loy.

[11] ESL is ordered to pay \$3000 in costs and expenses to Ms Shale within 28 days of the date of this determination.

Robin Arthur  
Member of the Employment Relations Authority