

[3] As the preliminary matter was determined on the papers I indicated my preliminary view was tariff costs based on a half-day hearing was appropriate.² Mr Sidhu supports this preliminary view.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Contribution to Costs

[5] The power of the Authority to award costs is contained in cl 15 of schedule 2 of the Act. 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.³

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

[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*⁴ as confirmed in *Fagotti v Acme and Co Limited*.⁵ 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 party's conduct.

Submissions

[8] Mr Singh submitted payment based on the costs of a full day's hearing is appropriate in the circumstances, given the significant preparation required to facilitate the hearing on the papers, including the drafting of witness statements. He also said two to three days preparation are usually required for each day of hearing and that he had

² Ibid at [53].

³ For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

⁴ [2005] 1 ERNZ 808.

⁵ [2015] NZEmpC 135 at 114.

“incurred significant costs in order to facilitate a hearing on the papers which deserve to be properly recognised and awarded accordingly”.

[9] Mr Sidhu said no details were provided of what was involved in the claimed significant preparation and it was not accepted this was required in this case. He also said the respondent’s statements did not add value to the investigation, given the preliminary determination was made based on industry practice. Finally, Mr Sidhu said “that ‘equity and good conscience’ should be considered, ... as [he] has no legal ability to earn wages (having no visa), hence the exploitation claim”.

Analysis

[10] No evidence was provided to support Mr Singh’s claims of the extent of costs actually incurred or that multiple days of preparation were required for what I consider was a straight-forward preliminary determination. Mr Singh’s submissions included reference to “rules of thumb” regarding preparation time, rather than evidence of actual costs. I do not consider it appropriate to provide what would effectively be an uplift based on Mr Singh’s submissions.

[11] Mr Sidhu accepted my preliminary view tariff costs based on a half-day hearing was appropriate. I have no reasons therefore to depart from that preliminary view.

Orders

[12] Gurdeep Sidhu is ordered to pay to Jatinder Singh within 28 days of the date of this determination the sum of \$2,250 as a contribution to costs.

Shane Kinley
Member of the Employment Relations Authority