

Costs principles

[4] A party should receive a reasonable contribution to costs incurred in achieving a successful result. Costs are discretionary, modest, and are not a mechanism to punish the other party. Some cases may require costs to lie where they fall. ¹

[5] The Authority may use a notional daily tariff adjusting this up or down as appropriate depending on the case. Such an adjustment may take into consideration a liable party's means to pay costs, additional preparation required if a case is complex, and any conduct of a party that has unnecessarily increased costs. ²

[6] The current tariff applied for a one-day Authority investigation meeting is \$4,500.00. This amount is considered a starting point for assessing a reasonable contribution to the costs incurred by a party preparing for and taking part in an investigation meeting.

Applicant's submission

[7] The applicants say that Mr Lovepreet Singh has the ability to pay costs and that while eventually he paid the amount due under the settlement there was unnecessary time involved in getting him to that stage. They say that applying a strict approach to costs with just a notional hearing time (which in this case was less than an hour) amounts to an injustice because it does not address 'future deterrence.'

[8] The applicants submit there should be an uplift to \$4,500.00 equivalent to a one day hearing to cover the costs to them to 'enforce the settlement.' They also seek the filing fee of \$71.56.

Respondent's submission

[9] The respondent says that the award for costs is not meant to be a punishment, the applicant has already been penalised; there are no grounds for an uplift in the daily tariff, the meeting lasted 40 minutes, and that costs in a successful compliance order are typically \$500.00 to \$750.00. The applicants submit an award of \$500.00 is appropriate.

¹ Employment Relations Act 2000, Schedule 2, clause 15 and *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme and Co Limited* [2015] NZEmpC 135 at 106-108.

² As above.

Assessment and finding

[10] I agree that the applicants should have an award for costs. They were successful in their application for a penalty albeit one on the lower end of the scale. The apparent starting point would be an hour which rounds to \$560.00 based on an eight-hour day. I do not accept this was a complex matter to prepare for.

[11] The applicants state that Mr Lovepreet Singh has business interests and can pay an award for costs. There was little information provided to support this assertion, but I have already considered in my determination that Mr Lovepreet Singh appeared to have the ability to find funds to meet the settlement payments (eventually). I do not consider I have any material to indicate that he cannot meet a costs award.

[12] I accept that the respondent did not meaningfully engage in the investigation process when the applicants were originally faced with having to lodge a compliance order. He then did not engage meaningfully with the process until he had late-stage representation. This meant the applicants continued to engage representation in the process when Mr Lovepreet Singh's earlier participation, for example at the conference call stage, may have avoided continued costs. I find this warrants an uplift but not to the extent submitted for the applicants. This is because I agree with the submission from the respondent that a costs award is not a punishment.

[13] Considering the above I find that an award of \$1,800.00 in costs is appropriate.

Order

[14] Lovepreet Singh is ordered to pay Amandeep Singh and Simran Kaur the single sum of \$1,800.00 as a contribution to their costs, together with the filing fee of \$71.56 within 28 days of this determination.

Antoinette Baker
Member of the Employment Relations Authority