

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2023] NZERA 435
3132555 and 3133799

BETWEEN VGP
Applicant

AND STONEWOOD GROUP
LIMITED
Respondent

Member of Authority: Claire English

Representatives: Danny Gelb, advocate for the Applicant
Greg Bennett, advocate for the Respondent

Investigation Meeting: On the papers

Submissions received: 2 November 2022 from Applicant
5 May 2023 from Respondent

Determination: 11 August 2023

COSTS DETERMINATION OF THE AUTHORITY

Substantive Determination

[1] On 21 October 2022, the Authority issued two determinations in these matters, first, dismissing Stonewood Group Limited's (Stonewood's) application for strike out, and second, granting VGP interim non-publication orders. Both matters were determined "on the papers".

[2] The parties were encouraged to resolve any issue of costs between them. The parties have not been able to resolve costs between themselves and have filed memoranda accordingly.

[3] VGP now seeks costs following these determinations, as follows:

- a. In respect of the non-publication issue, that actual costs (indemnity costs) of \$6,325 are awarded; and

- b. In respect of the strikeout issue, that a contribution to costs of \$3,375 be awarded.

[4] This amounts to a total costs award sought of \$9,700, in respect of two matters determined “on the papers”. VGP relies in both instances, on a single invoice from their advocate. This invoice also covers other matters for which costs are not sought.

[5] Stonewood resists this claim. It takes the position that:

- a. There is no break-down provided as to how many hours of work were spent on either issue, or what the work involved;
- b. Many of the documents were prepared by others and/or for use in another forum, therefore putting VGP to no additional costs;
- c. In any event, and however viewed, the amounts claimed are excessive for the work done, given that these were preliminary matters decided “on the papers”.

[6] Stonewood suggests costs should therefore be minimal, and suggests the sum of \$500 + GST, or a total of \$575.00.

Principles

[7] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act). The starting point is that costs are to follow the event.

[8] 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*¹ as confirmed in *Fagotti v Acme and Co Limited*.² The principle set out in the above cases is that costs are to be modest, and not to be used as a punishment.

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

[10] VGP is the successful party, and thus is entitled to some contribution to costs.

¹ [2005] 1 ERNZ 808.

² [2015] NZEmpC 135 at 114.

³ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

[11] While VGP has been the successful party, I am not persuaded that the claim for costs is proportionate, especially in light of the failure to particularise the hours taken and the work performed.

[12] There was no in-person investigation meeting in these matters. The determinations were made “on the papers”, and as I have already noted were preliminary determinations, not a disposal of the substantive matter. It is fair to say that these types of applications are far from novel, and would not be expected to be especially time-consuming.

[13] In addition, as the Authority’s tariff regime makes clear, parties can expect to receive a contribution to their costs, rather than their actual costs, as requested in respect of the non-publication application. The starting point is the tariff, with uplifts to be granted for actions which unreasonably lengthen or complicate the investigation process for all concerned. I do not accept that Stonewood merely disputing VGP’s position and wanting the Authority to determine matters meets this threshold.

[14] For these reasons, I consider it appropriate to award a contribution to costs that equates to one-half of the daily tariff, that is, \$2,250.00.

Orders

[15] I order Stonewood to pay to VGP the sum of \$2,250.00 as a contribution towards his costs.

Claire English
Member of the Employment Relations Authority