

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 24
3071732

BETWEEN	WDT Applicant
AND	JJP First Respondent

Member of Authority: Vicki Campbell

Representatives: Shima Grice, counsel for Applicant
Nicola Watkins for Respondent

Submissions and other communications received: 19 December 2019 from Applicant
23 December 2019 from Respondent

Determination: 23 January 2020

COSTS DETERMINATION OF THE AUTHORITY

A. JJP is ordered to pay to WDT the sum of \$1,434.31 as a contribution toward costs within 28 days of the date of this determination.

[1] In a determination dated 11 October 2019 I made orders requiring JJP to comply with a consent determination dated 25 March 2019.¹

[2] I reserved costs and invited the parties to resolve the issue between them. The parties have been unable to resolve the matter and WDT has lodged a costs memorandum seeking a determination of the issue.

¹ *WDT v JJP* [2019] NZERA 585.

[3] The Authority received an emailed request from JJP for the issue of costs to be stayed on the basis that it had lodged a de novo challenge to my earlier determination. As advised to Ms Watkins, JJP's representative, and in accordance with s 180 of the Employment Relations Act 2000 a challenge does not automatically operate as a stay of proceedings unless the Authority or Court makes such an order. Neither the Court nor the Authority have made such an order.

[4] As advised to Ms Watkins in such situations the Authority will usually proceed to determine costs. The Court's practice directions allow a costs challenge to be incorporated into the plaintiffs existing challenge to the Authority's substantive determination.²

[5] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.³ The principles applying to costs are well settled and do not require repeating.⁴

[6] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁵ The application for compliance orders was done on the papers before the Authority without the need for any submissions from the parties.

[7] WDT incurred actual costs of \$1,434.31 including GST. I consider these costs to be reasonable in all the circumstances. It is appropriate to award full costs incurred by WDT in obtaining the compliance orders.

[8] JJP is ordered to pay to WDT the sum of \$1,434.31 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority

² <https://employmentcourt.govt.nz/assets/Documents/Publications/EMPLOYMENT-COURT-PRACTICE-DIRECTIONS-as-published-on-EC-Website20181214.pdf>.

³ Employment Relations Act 2000, Schedule 2, clause 15.

⁴ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁵ Practice Note 2, Costs in the Employment Relations Authority.