

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 336
3174324

BETWEEN	SAM WILSON Applicant
AND	AZ SCAFFOLDING (2017) LIMITED Respondent

Member of Authority:	Rowan Anderson
Representatives:	Richard Anderson, advocate for the Applicant No appearance for the Respondent
Investigation Meeting:	On the papers
Submissions received:	30 May 2023 from the Applicant No submissions from the Respondent
Determination:	26 June 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] On 17 May 2023 the Authority issued a determination¹ in which I found that Sam Wilson was unjustifiably dismissed by AZ Scaffolding (2017) Limited (AZ Scaffolding) and ordered AZ Scaffolding to make payment to Mr Wilson of compensation for humiliation, loss of dignity and injury to feelings. AZ Scaffolding were also ordered to make payment to Mr Wilson as to an arrears of wages.

[2] Costs were reserved. Mr Wilson has attempted to resolve the issue of costs with AZ Scaffolding. AZ Scaffolding has not engaged, the parties have not been able to agree on costs, and Mr Wilson now asks the Authority for orders as to the costs he incurred in pursuing his claims.

¹ Wilson v AZ Scaffolding (2017) Limited [2023] NZERA 249.

[3] Mr Wilson submits that his total costs incurred were \$6,375 plus GST. Costs are sought by Mr Wilson in the amount of \$4,500 on the basis of an investigation meeting of one-day and the Authority's daily tariff.

[4] AZ Scaffolding did not appear at the investigation meeting and has not lodged submissions as to the costs application.

Analysis

Costs principles

[5] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.²

[6] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that Calderbank offers may be taken into account in setting costs, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.³

[7] The daily tariff is usually taken as a starting point,⁴ although is not to be used in a rigid manner, with principled adjustments made having regard to the to the particular characteristics of a case.

Costs to follow the event

[8] Mr Wilson was successful in pursuing his claims against AZ Scaffolding and it is appropriate that costs follow the event.

Application of the daily tariff

[9] The substantive proceeding involved the setting down of a one-day investigation meeting. However, the investigation meeting did not consume the whole day and concluded at 1.32pm.

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

³ *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

⁴ Practice Note 2: Costs in the Employment Relations Authority, issued 29 April 2022.

[10] Having regard to the time required at the investigation meeting, I consider the appropriate starting point would see a contribution of \$3,000 as representing two-thirds of one-day.

[11] I do not consider there is a basis for either an uplift or downwards adjustment to the abovementioned sum. I am satisfied that Mr Wilson's costs were reasonably incurred and that they exceeded both the contribution sought and the sum which I consider should be subject to an order.

Orders

[12] For the above reasons I order AZ Scaffolding (2017) Limited to pay Mr Wilson, within 28 days of this determination, \$3,000 as a contribution to towards Mr Wilson's costs of representation.

Rowan Anderson
Member of the Employment Relations Authority