



unsuccessful party; the nature of the case may allow for an order that costs lie where they fall; and the Authority may use a notional ‘daily rate’ or ‘tariff’ as a starting point to assess costs.

[3] Undue rigidity in applying that tariff is avoided by upward or downward adjustments appropriate to the particular case. Those adjustments may account for a liable party’s means to pay costs, the preparation required in particularly complex matters and where conduct of parties has unnecessarily increased costs.<sup>3</sup>

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

[5] The applicant is under a legal aid grant for this matter and has incurred actual costs and disbursements of \$5,274.51. Costs on an indemnity basis are sought amounting to \$4758.49 and other expenses including disbursements, filing fee, travel and travel time for counsel.

[6] The applicant says indemnity costs are just in the circumstances of this case because she was put to unnecessary expense through both an unmeritorious justification of the respondents’ actions as an employer and the way he participated in the process.

[7] This included delays at the mediation stage attributable to the respondent and a delay on the day of the investigation meeting due to the respondent’s lawyer being late (due to a diary issue), although the respondent was on time. One witness for whom a brief had been provided did not attend the hearing.

[8] Mr Tritt has not provided any submission in reply and Mr Rollo had had no communication from him.

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<sup>3</sup> Above n2.

## **Assessment**

[9] The investigation meeting was held over a half day. Weighing the relevant principles referred to above, having been successful, Ms Wishnowsky is entitled a contribution towards her costs.

[10] However, costs are not to be used as a punishment and an award of indemnity costs requires “exceptionally bad behaviour” during litigation which is a high threshold to cross and is not met in circumstances of this case.<sup>4</sup> Delays in attending mediation are unlikely to attract a costs award. Mr Tritt was entitled to defend the claim against him and have his responses heard. Indemnity costs are not appropriate in the circumstances of this case.

[11] I consider that costs based upon one half day’s hearing time of \$2,250.00 appropriate with an uplift based on a key witness not attending on the day, having provided a brief, which would have increased preparation costs for the Ms Wishnowsky that were unnecessary.

## **Order**

[12] Aaron Brian Tritt is ordered to pay Karen Daphne Wishnowsky the sum of \$3000.00 as costs within 28 days of this determination.

Sarah Kennedy  
Member of the Employment Relations Authority

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<sup>4</sup> *Bradbury v Westbank Banking Corp* [2009] NZCA 232 at [28].