

that each case has to be considered in light of its circumstances. More specifically there is reference by Ms Dunn to the principles that the Authority has discretion both as to whether costs should be awarded and the quantum of any award; and that costs are frequently judged against a notional daily rate.

[5] Ms Dunn submits that the notional daily tariff is now recognised by the Authority as \$3,500 and that figure should be the Authority's starting point in this case. She submits that the investigation meeting occupied most of the day, required extensive preparation and the actual costs exceeded that amount.

[6] Ms Dunn submits that the disclosure by the applicant during the investigation meeting that she had commenced a bankruptcy process was of limited relevance because, as she understood it, the New Zealand Nurses Organisation indemnifies members in relation to cost awards made against them.

[7] The respondent seeks a contribution of \$3,500 towards its costs.

The applicant's submission

[8] Mr Lawrie submits that as the applicant has challenged the determination of the Authority then it should leave the issue of costs to the Employment Court. He submits that this would accord with the effective and efficient resolution of the costs matter.

[9] Mr Lawrie further submits that if the Authority should be minded to determine the issue of costs, then any contribution should be at the lower end of the scale because there was additional time spent after the investigation meeting when one of the respondent's witnesses was unavailable because of illness and that the Authority did find there was procedural unfairness so the respondent was not wholly successful.

Determination

[10] Although the determination of the Authority has been challenged, the usual practice of the Authority is to issue a determination as to costs in relation to the investigation meeting.

[11] The general principle is that costs follow the event and this would mean, in this case, that the respondent is entitled to costs.

[12] The applicant is at this time an undischarged bankrupt. The Authority only became aware that she was in the process of being adjudicated bankrupt during the investigation meeting.

[13] There was a resumption of the investigation meeting at a later date to take the evidence of one further witness by telephone.

[14] By that time the Official Assignee had been formally advised of the applicant's proceedings before the Authority and had entered into a written arrangement with the applicant in the event of remedies being awarded by the Authority. The written arrangement of which the Authority was provided a copy also provided that the Assignee was indemnified by the applicant in respect of any costs.

[15] I am not satisfied that there is any reason related to the bankruptcy status of the applicant not to determine the issue of costs in those circumstances.

[16] Ms Dunn has sought costs at the level of the notional daily tariff now recognised by the Authority at \$3500. The meeting was almost a full day. There was the need to hold a further telephone conference to deal with the evidence of a respondent witness who was unavailable on the day of the original investigation meeting because of illness. I would not have increased the notional daily tariff to take that additional cost into account, but there was no suggestion from Ms Dunn that the Authority do so.

[17] In all the circumstances, I am satisfied that the appropriate award to make is the sum of \$3,500.

[18] I order X pay to Oceania Group (NZ) Limited the sum of \$3,500 being costs.

Helen Doyle
Member of the Employment Relations Authority