

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 478A/10
5301315

BETWEEN SILIA AUTAGAVAIA
 Applicant

AND TINYTOWN LEARNING
 CENTRES LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Leah Fremaux, Advocate for Applicant
 Ian Davidson, Advocate for Respondent

Submissions: 26 November 2010 for the Applicant
 09 December 2010 for the Respondent

Date: 20 December 2010

COSTS DETERMINATION

[1] The applicant is an early childhood teacher who was summarily dismissed for assaulting a child at the early childhood centre she was a Team Leader at. She pursued a personal grievance claim for unjustified dismissal and was wholly successful. The applicant is entitled to a contribution towards her actual legal costs.

[2] In a determination issued on 10 November 2010 I held that the applicant's dismissal was substantively and procedurally unjustified. The applicant was awarded \$8,000 for lost remuneration pursuant to s128 of the Employment Relations Act (the Act) and \$8,500 pursuant to s123(1)(c)(i) of the Act.

[3] The parties were invited to resolve costs between them, and failing that a timetable was set for costs memoranda to be filed. Costs were not resolved by agreement and the applicant now seeks a costs order.

[4] The applicant says her actual costs inclusive of GST and disbursements were \$11,333.82. The applicant attached what appears to be a time and cost ledger print out to her submissions, but did not provide copies of any invoices that had been rendered or paid.

[5] The Statement of Problem was filed on 30 July 2010 and the Statement in Reply was filed on 1 September 2010. On 17 June 2010 the applicant sent the respondent a without prejudice except as to costs letter offering to settle her personal grievance claim for \$10,000 to be paid pursuant to section 123(1)(c)(i) of the Act if her summary dismissal was withdrawn and replaced with a resignation.

[6] The respondent offered to settle for \$8,500 to be paid pursuant to s123(1)(c)(i) of the Act but it maintained that her summary dismissal for assaulting a child had to remain on her employment record.

[7] The applicant is seeking an award of \$9,493.77 costs made up of \$8593.77 (excluding GST) which she says is actual costs since the without prejudice except as to costs offer was made on 17 June 2010 plus \$900 (GST exclusive) which she says is 66% of her actual costs and disbursements up to 16 June 2010.

[8] This matter involved a one day investigation meeting. The applicant filed her written submissions on 26 October 2010 and the respondent filed its written submissions on 3 November 2010.

[9] The respondent submits that the Authority should not automatically give effect to the applicant's Calderbank offer. It says that it did not unreasonably refuse to settle this matter and that the applicant's demand to change her summary dismissal to a resignation was unacceptable because it was untrue. The respondent submits that it should not be penalised by a high costs award and that a costs award of \$3,750 would be appropriate.

[10] Pursuant to clause 15, Schedule 2 of the Employment Relation Act 2000, the Authority has the power to award costs to the applicant in any amount which it thinks reasonable. The principles relating to costs in the Authority are well settled so there is no need for me to set those out in full; see *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808.

[11] I adopt a notional daily tariff of \$3,750 in this matter, which is consistent with the Employment Court's dismissal of a challenge against the Authority's award of \$3,750 for a one day investigation meeting in *Johnson v Gilligan Business School*, 03/04/09, Travis J, AC14/09.

[12] I find that there are no factors which would warrant a downward adjustment of the notional daily tariff. I consider that the notional daily tariff of \$3,750 should be adjusted upwards in this case to reflect that applicant offered to settle before proceedings had even been filed for considerably less than she was ultimately awarded by the Authority. The respondent's refusal of the applicant's reasonable settlement offer put both parties to considerable time and expense.

[13] I consider that an award of \$5,750 for costs plus disbursements of \$71.56 for the filing fee is a reasonable contribution by the respondent towards the applicant's costs, in light of the applicant's success.

[14] **The respondent is ordered to pay the applicant \$5,821.56 towards her costs.**

Rachel Larmer
Member of the Employment Relations Authority