

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 238
5415996

BETWEEN

CHERIE COTTRELL
Applicant

A N D

THE NELSON SOCIETY FOR
THE PREVENTION OF
CRUELTY TO ANIMALS
INCORPORATED
Respondent

Member of Authority: Rachel Larmer

Representatives: Tagan Lyall, Counsel for Applicant
Kay Chapman, Advocate for Respondent

Investigation meeting: On the papers

Submissions Received: 30 October 2013 from Respondent
13 November 2013 from Applicant
14 November 2013 from Respondent

Date of Determination: 15 November 2013

COSTS DETERMINATION OF THE AUTHORITY

- A. Ms Cherie Cottrell is ordered to pay the Nelson Society for the Prevention of Cruelty to Animals Incorporated (Nelson SPCA) \$4,250 towards its actual legal costs**

Employment relationship problem

[1] In a determination dated 16 October 2013¹ the Authority held that Ms Cottrell's personal grievance claims for unjustified disadvantage and unjustified dismissal did not succeed. The parties have been unable to resolve costs by agreement so Nelson SPCA now seeks a costs award in its favour.

¹ [2013] NZERA Christchurch 215

[2] Nelson SPCA says it incurred costs of \$7,297.33 and it seeks to recover that full amount because all of these costs were incurred after Ms Cottrell unreasonably rejected its *Calderbank* offer on 20 March 2013.

[3] Ms Cottrell queries whether Nelson SPCA actually incurred costs based on publicity that Chapman Employment Relations Limited (by whom Ms Summerville was instructed) provides free advice to Nelson SPCA.

[4] I am satisfied from the invoices provided with Nelson SPCA's explanation that it was provided with free advice up to mediation but after that incurred costs (which were charged at a reduced rate to reflect the fact it was a charitable organisation) for the Authority's investigation meeting.

Relevant law

[5] I adopt the Authority's usual notional daily tariff based approach to costs. The notional daily tariff is currently \$3,500. Costs are discretionary with the discretion to be exercised on a principled basis. The principles relating to costs in the Authority are so well established that I do not need to repeat them.

Are there any factors which should reduce the notional daily tariff?

- [6] Ms Cottrell submits that the notional daily tariff should be reduced because;
- a. the investigation meeting did not last for a full day (it ended at around 3.30pm); and
 - b. the proceedings were "*not necessarily complex*".

[7] Nelson SPCA says the tariff should not be reduced because the investigation meeting ended early because Ms Cottrell wanted to file written submissions rather than deal with submissions on the day. It says it was put to the extra cost of filing written submissions so this matter should be treated as a full one day investigation meeting.

[8] I do not accept that because the tariff has been set to reflect that sometimes submissions are received on the day and sometimes written submissions are filed after the investigation meeting.

[9] I do not accept that the nature of the claim should result in a reduction of the notional tariff but I do agree that it should be reduced to reflect the actual time spent at the investigation meeting. I consider it appropriate to reduce the notional daily tariff pro rata by \$750 to reflect that.

Are there any factors which should increase the notional daily tariff?

[10] Ms Cottrell's rejection of a reasonable settlement offer is a factor which should result in an increase to the notional daily tariff. The offer was made at an early stage and before either party had incurred any costs to prepare for the Authority's investigation.

[11] This was a generous offer which was made shortly after mediation so if it had been accepted not only would Ms Cottrell have been thousands of dollars better off but both parties would have avoided incurring the costs that they have expended.

[12] Nelson SPCA also submits that the manner in which Ms Cottrell conducted her case unnecessarily increased its costs. I do not accept that submission. The additional evidence which Nelson SPCA claims it had to call was necessary in order for it to successfully defend Ms Cottrell's claims. The fact she was unsuccessful is already reflected in the fact that Nelson SPCA is being awarded costs.

[13] I consider that the notional daily tariff should be increased by \$1,500 to reflect Ms Cottrell's unreasonable rejection of the generous Calderbank offer.

Outcome

[14] The notional daily tariff is reduced to \$2,750 to reflect the time actually spent at the Authority's investigation meeting. That figure is then increased by \$1,500 to reflect Ms Cottrell's unreasonable rejection of Nelson SPCA's reasonable settlement offer which I find unnecessarily increased its costs.

[15] Ms Cottrell is ordered to pay Nelson SPCA \$4,250 towards its actual legal costs.

Rachel Larmer
Member of the Employment Relations Authority

