

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 297
5532699

BETWEEN PENELOPE ANN JONES
Applicant

A N D KAURI POINT FARM PARK
LIMITED
First Respondent

OHAEAWAI NURSERY LIMITED
Second Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
G Milne, Respondent director

Submissions received: 21 June 2016 from Respondents
27 June 2016 from Applicant

Investigation Meeting: On the papers

Date of Determination: 1 September 2016

COSTS DETERMINATION OF THE AUTHORITY

A. The parties are to meet their own costs.

Employment relationship problem

[1] The Authority in its substantive determination dated 16 June 2016¹ dismissed the personal grievance and wage arrears applications. Costs were reserved.

[2] The respondent now applies for costs. Their actual costs were \$4,970 excluding GST.

What is the starting point for assessing costs?

[3] The correct approach to assessing costs in this matter is for the Authority to adopt its usual notional daily tariff based approach to costs.² The current notional daily tariff is \$3,500. This matter involved a one day investigation meeting. The starting point for assessing costs is therefore \$3,500.

Are there any factors that warrant adjusting the notional daily tariff?

[4] The daily tariff must be adjusted to account for the fact the respondents were not legally represented at hearing. From the invoices filed, the respondents were only represented up to mediation and filing a statement in reply.

[5] There is no basis evidenced for costs to be awarded in respect of mediation. These are generally met by the parties.

[6] A category one civil claim in the District Court legal representation up to filing the equivalent of a statement in reply would attract a costs award of \$885.³ There is no justification for an award here in excess of that amount. The starting point is lowered to \$885.

[7] Complaints about non-receipt of evidence such as the flash drive were issues between the respondent and its former lawyer. They do not justify any reduction in costs.

[8] There was conduct justifying a further reduction in costs. The respondents did not instruct their lawyer prior to the teleconference on 8 December 2015.⁴ The respondents then failed to comply with the timetabling directions for filing evidence. The hearing set down for 18 April 2016 was to proceed without hearing from the respondents.

[9] However Mr Milne attended and sought to be heard. It became plain during the hearing that he wished to put several pieces of evidence to Ms Jones that she had not seen and had not finished examining Ms Jones by 4.30 pm. As a result an adjournment of the matter to a further hearing day in June was required.⁵ The

² *Mattingly v Strata Title Management Ltd* [2014] NZEMPC 15 at [16]

³ District Court Rules 2014 Schedule 4 and 5.

⁴ Minute dated 8 December 2015.

⁵ Minute dated 20 April 2016.

additional hearing day would not have been required if the Respondents had complied with the timetabling orders made in December 2015.

[10] Costs are discretionary. The nature of the case can influence costs and result in an order that costs lie where they fall in certain circumstances.⁶ The appropriate course here in my view is for costs to lie where they fall.

[11] The parties are to meet their own legal costs.

T G Tetitaha
Member of the Employment Relations Authority

⁶ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808, 819 at [44].