

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 103
5579687

BETWEEN

ANDREW LEOTA
Applicant

A N D

CHIEF EXECUTIVE OF THE
MINISTRY OF SOCIAL
DEVELOPMENT
Respondent

Member of Authority: Rachel Larmer

Representatives: Grant McDonald, Co-worker of Applicant
Judith Moana and Nikki Farrell, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 15 March 2016 from Applicant
09 March 2016 from Respondent
17 March 2016 from Respondent

Date of Determination: 05 April 2016

**COSTS DETERMINATION
OF THE EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] Mr Leota did not succeed in any of the claims he pursued against his employer, the Ministry of Social Development (MSD). MSD as the successful party is therefore entitled to a contribution towards its actual costs.

[2] Although MSD was represented by in-house counsel, it was assisted by external counsel who billed for their advice in respect of the Authority proceedings. I am therefore satisfied that MSD has actually incurred legal costs in respect of this matter of at least \$2,254.

[3] MSD seeks an award of costs of \$3,500 (being the current notional daily tariff) plus \$2,432 as a contribution towards the cost of in-house counsel costs plus \$2,254 for the cost of the external legal advice it received.

[4] Costs principles are so well established in the Authority that I do not need to restate them here. This matter involved a three hour investigation meeting. I do not award costs for the time taken by the Authority to prepare and deliver its oral determination.

[5] I adopt the Authority's usual notional daily tariff-based approach to costs. The current notional daily tariff is \$3,500 so on a pro rata basis the starting point for assessing costs is therefore \$1,500.

[6] I am not minded to award costs to cover the perceived internal value of the legal services provided by MSD's in-house legal services because the cost of internal counsel would be incurred by MSD whether or not it was involved in these proceedings. I therefore decline MSD's request to award \$2,432 towards the costs it submits it has incurred for its in-house legal counsel.

[7] I am satisfied it is appropriate for MSD to be awarded a contribution towards the costs associated with it engaging external legal advice and note that it exceeds the pro rata notional daily tariff. Neither party identified any factors that should warrant an adjustment being made to the notional daily tariff so I therefore adopt the notional daily tariff.

[8] Accordingly Mr Leota is ordered to pay MSD \$1,500 towards its actual legal costs.

Rachel Larmer
Member of the Employment Relations Authority