

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 147
5639198

BETWEEN T
 Applicant

A N D K
 Respondent

Member of Authority: Rachel Larmer

Representatives: Allan Halse, Advocate for Applicant
 Shima Grice, Counsel for Respondent

Date of Investigation Meeting: On the papers

Submissions: 24 March 2017 from Applicant
 28 March 2017 from Respondent

Date of Determination: 18 May 2017

**COSTS DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] *Material background* - Mrs T as the successful party is entitled to a contribution towards her actual legal costs. The parties were encouraged to resolve costs by agreement but that has not occurred.

[2] *Mrs T's claim* - Mrs T now seeks costs of \$17,896 plus GST which she said is 75% of her total legal costs as at the conclusion of the substantive investigation.

[3] *K's position* - K accepts that Mrs T is entitled to an award of costs in her favour. However K says the Authority should adopt its usual notional daily tariff based approach to costs.

[4] *Consistency* - I consider that it is appropriate for the Authority to approach costs on that basis. I consider that there is no good reason to depart from the Authority's usual costs procedure. I do not consider it appropriate in terms of maintaining consistency of Authority costs' determinations to adopt Mr Halse's suggested approach.

[5] *Relevant law* - Costs principles in the Authority are so well established I do not need to set them out here. The current notional daily tariff rate is \$4,500 for the first day of an investigation meeting.

[6] *Duration of IM* - This investigation meeting started at 9am and finished at 12pm. The notional daily tariff is to be pro-rated on the basis of three hours' of Authority time. The notional starting point for assessing costs in this matter is therefore \$1,930.

[7] *Adjustment to notional starting tariff* - I must now consider whether there are any factors that warrant adjusting the notional starting tariff.

[8] *No reduction* - I find that there are no factors that would warrant the notional starting tariff being increased.

[9] *Calderbank offers* - I do not accept Mr Halse's submission the notional starting tariff should be increased because K's *Calderbank* offers were inadequate. I do not consider K's settlement offers to be relevant because Mrs T recovered more from the Authority than K offered her. I note that Mrs T did not make any *Calderbank* offers to K. I do not consider that there is any basis to increase costs because of K's settlement offers which I consider Mrs T reasonably rejected.

[10] *No increase to tariff* - I accept Mr Halse's submission that K's conduct extended the length of the investigation meeting. A review of the applicable timeline does not substantiate Mr Halse's submission that K has unreasonably drawn out the litigation. I consider that this matter was conducted efficiently.

[11] *Alleged delay* - I consider the only delay that occurred was between Mrs T's dismissal on 8 October 2015 and the filing of her claim on 24 August 2016. I note that Mrs T's original Statement of Problem was amended twice before the matter was heard on 23 January 2017.

[12] *Costs order* - Within 28 days of the date of this determination K is ordered to pay Mrs T \$1,930 towards her actual legal costs together with \$71.56 to reimburse her filing fee.

Rachel Larmer
Member Employment Relations Authority