

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 173
3016391

	BETWEEN	MATTHEW HAWEA Applicant
	A N D	SPF SPECIALIST PLASTERBOARD FIXING LIMITED First Respondent
	A N D	ROYDON GUILFORD Second Respondent
Member of Authority:	T G Tetitaha	
Representatives:	D Gelb, for the Applicant A Sharpe, Counsel for the Respondents	
Investigation Meeting:	On the papers	
Submissions Received:	17 May 2018 from Applicant 14 May 2018 from Respondents	
Date of Determination:	30 May 2018	

**COSTS DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

A. I decline to award any legal costs. Each party is to meet its own costs.

Employment Relationship Problem

[1] Matthew Hawea was unsuccessful in his applications for compliance orders and penalties against the respondents. Those applications were dismissed and costs were reserved.¹

[2] The respondents now seek costs of \$1,225 plus GST. Only the first respondent has been invoiced for payment.

¹ *Matthew Hawea v SPF Specialist Plasterboard Fixing Limited and Roydon Guilford* [2018] NZERA Auckland 132

What is the starting point for assessing costs?

[3] The usual process in the Authority is to use a daily tariff approach for assessing costs of \$4,500 for one day hearings. Given this matter proceeded on the papers, a lower starting point is warranted for assessing costs.

[4] The respondent's actual costs incurred were substantially lower (\$1,378.13, GST inclusive). An appropriate starting point where the costs incurred were lower than the applicable daily tariff is 66% of actual costs, or \$909.56.

Are there any factors that warrant adjusting that tariff?

[5] At the time of filing the proceeding, Mr Hawea had a meritorious application against the first respondent. It was only after he had filed this proceeding that the first respondent paid the amounts owed in full.

[6] The reasons for the late payment and breaches of the record of settlement do not appear to have been explained to Mr Hawea until 24 April 2018 when Mr Sharp filed the respondents' submissions. This placed Mr Hawea in the situation of having no opportunity to dispense with filing and/or withdrawal of the penalty proceeding before costs were incurred. The reasons for late payment should have been explained to Mr Hawea at the earliest opportunity to prevent the filing of proceedings and/or negotiate their withdrawal and costs.

[7] Given Mr Guilford was also the primary contact point for the first respondent I consider this to be conduct by both respondents that unnecessarily brought about these proceedings.

[8] If I was inclined to award costs, it would be to Mr Guilford only. Mr Guilford does not appear to have incurred any costs because only the first respondent has been invoiced. No evidence of payment of costs by Mr Guilford has been provided.

[9] In the circumstances I decline to award any legal costs. Each party is to meet their own costs.

Tania Tetitaha
Member of the Employment Relations Authority