

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2019] NZERA 604
3042095

BETWEEN MARION SAUNDERS
 Applicant

AND THE CHIEF EXECUTIVE OF
 THE INLAND REVENUE
 DEPARTMENT
 Respondent

Member of Authority: Michael Loftus

Representatives: Nil for Applicant
 Paul Gillespie, Counsel for Respondent

Investigation Meeting: On the papers

Determination: 22 October 2019

COSTS DETERMINATION OF THE AUTHORITY

[1] On 31 May 2019 I issued a determination addressing Ms Saunders application she be allowed to pursue a claim she was unjustifiably dismissed despite acknowledging she had not raised the grievance within 90 days as required by the Employment Relations Act 2000.¹ She was unsuccessful and costs were reserved.

[2] As the successful party the IRD now seeks a contribution toward the costs it incurred in defending the claims. Ms Saunders position is unknown as she has failed to provide any input despite opportunities to do so.

[3] It is here I note the original determination has been challenged but record that does not preclude a consideration of costs. Indeed precedent would suggest it

¹ [2019] NZERA 325

appropriate I proceed so the Court is seized of all matters when it considers the challenge.²

[4] Normally the Authority will use a daily tariff when addressing a costs claim.³ The current starting point is \$4,500 for an investigation's first day and there may then be adjustment occasioned by the circumstances.

[5] Here, however, an issue arises in that the claim was determined on the papers though that is recognised in IRD's submissions where, having noted the steps it had to take in respect to addressing the claim, it submits:

The respondent recognises that the steps above were dealt with on the papers, which has avoided the need for an Investigation Meeting. Therefore, the Respondent seeks a reduced award for costs of \$1,500 from the Applicant.

[6] Notwithstanding determination on the papers I conclude a third of a day is not unreasonable. Submissions still had to be prepared and had there been an investigation their presentation would have taken a significant portion of the time for which recompense is being sought. To that I add the fact other costs were incurred, at least in the initial stages, and these are re-compensable under the Authority's all-encompassing tariff approach.

[7] The claim is, I conclude, imminently reasonable and perfectly justifiable given the Authority's approach to costs.

Conclusion

[8] For the above reasons I order Marion Saunders pay the Inland Revenue Department the sum of \$1,500 (fifteen hundred dollars) as a contribution toward the costs the department incurred in defending Ms Saunders claims.

M B Loftus
Member of the Employment Relations Authority

² *Swales v AFFCO New Zealand Ltd* EmpC Auckland AC19/01, 23 March 2001 and *Sandilands v Chief Executive of the Department of Corrections* ERA Wellington WA67A/09, 10 September 2009

³ refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808