

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 6
3031537

BETWEEN ANA MARIA SIMARRO
GRANDE
Applicant

A N D THE BOARD OF TRUSTEES
OF MT ALBERT GRAMMAR
SCHOOL
Respondent

Member of Authority: TG Tetitaha

Representatives: A Simarro-Grande in person
P Pa'u Advocate for respondent

Investigation Meeting: On the papers

Submissions: 14 November 2018 from Applicant
12 November 2018 from Respondent

Date of Determination: 8 January 2019

COSTS DETERMINATION OF THE AUTHORITY

A. The parties are to meet their own costs.

Employment relationship problem

[1] The applicant withdrew her personal grievance application on or about 23 October 2018. The respondent seeks costs of \$2,500 and disbursements of \$100. Its actual costs are alleged to have been \$4,500 plus GST and disbursements of \$250.

What is the starting point for assessing costs?

[2] The Authority has adopted a notional daily tariff based approach to costs.¹ Matters lodged in the Authority from 1 August 2016 are subject to a daily tariff of

¹ *Mattingly v Strata Title Management Ltd* [2014] NZEmpC 15 at [16].

\$4,500.² The tariff is based upon there being preparation for and attendance at a hearing and is also inclusive of a party's usual disbursements.

[3] It was agreed this matter could be dealt with upon the papers. For a matter determined upon the papers i.e. without holding an investigation meeting, there must a reduction to reflect the fact no attendance at an investigation meeting was required.

[4] An appropriate starting point would have been half the daily tariff. There is nothing from the record or in submissions that indicates a higher starting point is warranted.

[5] Therefore the starting point for assessing costs is \$2,250. This is inclusive of any disbursements.

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

Factors which warrant a reduction in the notional daily tariff

[6] The applicant submits the costs tariff ought to be reduced because she suffers from anxiety and depression and has limited income. She has provided a breakdown of her living expenses. This showed a weekly deficit of \$7.54. She has also provided medical evidence to support her ill health.

[7] The Court has held the circumstances of the parties are important when determining costs.³

[8] Here the respondent has resources to meet its costs. In contrast the applicant is on a WINZ benefit, is currently in a weekly financial deficit and is dependent upon her grown children for support. An award of costs would produce extreme hardship, even if it was a token amount.

[9] Costs cannot become a deterrent to parties being able to access the Authority. This is especially relevant to parties whom are unwell and financially constrained. For the applicant English was a second language. This may have contributed to the delays in resolving her case.

[10] To award costs in these circumstances is punitive.

² Practice Note 2 Costs in the Employment Relations Authority para.4.

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

TG Tetitaha
Member of the Employment Relations Authority