

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 290
3069455

BETWEEN	BENJAMIN STANLEY EDA Applicant
AND	AORERE COLLEGE BOARD OF TRUSTEES Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in Person
Richard Harrison, counsel for Respondent

Investigation Meeting: On the papers

Submissions received: 6 and 27 July 2020 from Applicant
6 July 2020 from Respondent

Determination: 28 July 2020

COSTS DETERMINATION OF THE AUTHORITY

A. Aorere College Board of Trustees is ordered to pay to Mr Eda the sum of \$3,000 as a contribution toward costs within 28 days of the date of this determination.

[1] In a determination dated 23 June 2020 I held Aorere College Board of Trustees breached s 66 of the Employment Relations Act 2000, that Mr Eda had established a personal grievance for unjustified disadvantage and ordered the College to pay remedies of \$3,000.¹

¹ *Eda v Aorere College Board of Trustees* [2020] NZERA 243.

[2] I reserved costs and invited the parties to resolve the issue between them. The parties have been unable to resolve the matter and have lodged memoranda seeking a determination of the issue.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.² The principles applying to costs are well settled and do not require repeating.³

[4] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴

[5] There was a mixed measure of success by both parties. While Mr Eda was successful in his claim that the College had breached s 66 of the Act and that one or more conditions of his employment were affected to his disadvantage other aspects of his claim were not successful. The situation of mixed success has been examined by the Court in *Coomer v JA McCallum and Son Limited*.⁵

[6] Ultimately I must stand back and look at things in the round.⁶ Having done so Mr Eda must be considered the successful party. The College argued it was the more successful party because of its successful defence to Mr Eda's key claim that he be made a permanent member of staff. While that was the case, other aspects of the College's defence of Mr Eda's claims were not successful.

[7] The College submits that Mr Eda should not be awarded costs because he was self-represented and did not incur legal costs. After receiving Mr Eda's memorandum the Authority made further enquiries about costs he asserted he had incurred. It is apparent Mr Eda sought legal advice and assistance in relation to his claims and expended more than \$7,000 on legal costs associated with the Authority's proceedings. Accordingly, he is entitled to a consideration of costs.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

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

⁵ *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

⁶ *Ibid* at [43].

[8] The Authority's investigation meeting took one day. The starting point therefore is \$4,500. I accept the submissions of the College that the statement of problem lodged by Mr Eda made it difficult to discern what was being alleged and what the respondent needed to respond to. There was considerable time taken prior to, during and after the investigation meeting seeking clarity around Mr Eda's evidence and his claims. For these reasons a reduction to the daily tariff is appropriate.

[9] Taking all factors into account including Mr Eda's mixed success, Aorere College Board of Trustees is ordered to pay to Mr Eda the sum of \$3,000 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority