

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 587
3121852

BETWEEN	CIARA FITZPATRICK Applicant
AND	KIWI ENGLISH ACADEMY LIMITED First Respondent
	KATE HERBERT Second Respondent
	GUY HERBERT Third Respondent

Member of Authority:	Andrew Gane
Representatives:	Gerardus Elwell, counsel for the Applicant Kate and Guy Herbert for the Respondents
Submissions received:	31 August 2022 from Applicant 14 September 2022 from Respondent
Determination:	10 November 2022

COSTS DETERMINATION OF THE AUTHORITY

Background

[1] In my determination dated 18 August 2022, I found that Applicant, Ciara Fitzpatrick was entitled to be paid outstanding wages, outstanding holiday pay, interest on unpaid monies, and compensation from the Kiwi English Academy Limited (KEA). I made no findings against the Kate Herbert, or Guy Herbert. I reserved costs and encouraged the parties to resolve any issues of costs between themselves.

[2] The parties have been unable to do so. Ms Fitzpatrick has provided a memorandum in support of her claim for an award of costs payable to her by KEA. KEA says it is appropriate costs should lie where they fall.

[3] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.¹ The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[4] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act). The principles and the approach adopted by the Authority in which an award of costs is made are settled.²

Ms Fitzpatrick's claim for costs

[5] The investigation meeting in this matter was for two days and was held in person and by audio visual platform. Ms Fitzpatrick attended together with her representative and witnesses. Mr and Ms Herbert and supporting witnesses appeared for the Kiwi English Academy Limited.

[6] In the present case, Ms Fitzpatrick seeks payment of the daily tariff of \$4,500 and \$3,500 for the second day plus the filing fee of \$71.56.

KEA's response

[7] Mr Herbert on behalf of KEA argues that costs should lie where they fall. Mr Herbert is critical of Ms Fitzpatrick's conduct of proceedings. He also asks that the Authority should consider confidential evidence provided at the hearing. However, any reduction in costs should not be applied without some balance, that is the principles of equity and good conscience must also account for the countervailing interests of the successful party and broader public policy considerations.³

[8] Regarding Ms Fitzpatrick's conduct of proceedings, I found that the investigation meeting went smoothly, and the duration was not prolonged considering

¹ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

² [Awarding remedies and costs | Employment Relations Authority \(era.govt.nz\)](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).

³ *Koia v Attorney-General in Respect of the Chief Executive of the Ministry of Justice* (No 2) [2004] 2 ERNZ.

the number of witnesses and the issues involved. KEA has not put forward any argument as to why there should be a departure from the normal daily tariff rate.

Orders

[9] I find there is no reason to depart from the normal tariff approach. Accordingly, I order Kiwi English Academy Limited to pay to Ms Fitzpatrick the sum of \$8,000 towards costs, together with the filing fee of \$71.56 within 14 days of this determination.

Andrew Gane
Member of the Employment Relations Authority