

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 627
3188300

BETWEEN

ROSAMUND VAILAHI
Applicant

AND

MINIMARC CHILDCARE
CENTRE INCORPORATED T/A
MARC EARLY LEARNING
CENTRE
Respondent

Member of Authority: Rachel Larmer

Representatives: Paul Pa'u, counsel for the Applicant
Richard Harrison, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 11 November 2022 from the Respondent
No submissions from the Applicant

Date of Determination: 28 November 2022

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Respondent Minimarc Childcare Centre Incorporated t/a Marc Early Learning Centre ("*Marc*") was successful in having without prejudice evidence ruled inadmissible, so it now seeks costs.

[2] The Authority's admissibility determination dated 28 October 2022 ordered the Applicant to remove from her affidavit and Amended Statement of Problem all references to privileged without prejudice communications.¹

Authority's investigation

[3] The Authority indicated in its admissibility determination that it would treat the admissibility issue as having involved a half day investigation meeting, for the purposes of assessing costs in accordance with the Authority's notional daily tariff.

[4] Although the parties were encouraged to resolve costs by agreement, that did not occur. The parties were given a timetable within which to file costs submissions. Parties were warned that costs would not be considered outside that timetable without the prior leave of the Authority.

[5] The Respondent filed costs submissions, but the applicant did not.

[6] The Authority has determined costs 'on the papers' based on the available information.

Issues

[7] The only issue to be determined is what costs should the Respondent be awarded?

What costs should be awarded?

[8] The Respondent has sought a costs award based on the notional daily tariff for a half day investigation meeting. The current one day starting tariff is \$4,500 for the first day of an investigation meeting, so half of that is \$2,250.

[9] The Respondent did not identify any factors that should result in the notional starting tariff of \$2,250 being adjusted and the Authority was not aware of any.

[10] Accordingly, Mrs Vailahi is ordered to pay the Respondent \$2,250 costs within 28 days of the date of this determination.

¹ *Vailahi v Minimarc Childcare Centre Inc t/a March Early Learning Centre* [2022] NZERA 555 at [81].

Should the Respondent be awarded costs on this costs application?

[11] The Authority has not awarded the Respondent any costs for making this costs application. The Respondent's costs submission involved a simple and straightforward application of the notional daily tariff that had been pro-rated in accordance with the Authority's indication of the amount of time it considered should be applied to the admissibility matter for the purposes of assessing costs.

Rachel Larmer
Member of the Employment Relations Authority