

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 79
3111892

BETWEEN	STANLEY MARTIN GOOD Applicant
AND	PUKEKOHE HIGH SCHOOL BOARD OF TRUSTEES Respondent

Member of Authority:	Leon Robinson
Representatives:	Applicant in person Paul Pa'u, advocate for the Respondent
Submissions received:	15 and 19 October 2021 from Respondent 29 October 2021 from Applicant
Determination:	9 March 2022

COSTS DETERMINATION OF THE AUTHORITY

[1] Mr Stanley Martin Good (Mr Good) had been employed at Pukekohe High School (the School) since 1985. His employment was summarily terminated for serious misconduct on Tuesday 15 September 2020. The Respondent Board's HR committee had concluded that because of concerns about Mr Good's honesty and integrity, the relationship of trust and confidence had been irretrievably damaged.

[2] Mr Good challenged the summary termination and brought claims that he had been unjustifiably disadvantaged and dismissed, and that the Board had acted in breach of its duty of good faith. He sought reinstatement, reimbursement, compensation and costs.

[3] The Authority held an investigation meeting into Mr Good's claims over three days on 9, 10 and 11 June 2021. In a determination dated 1 October 2021 the Authority

found that the Board's decision to summarily terminate Mr Good's employment was not unjustifiable and he had not been unjustifiably disadvantaged. The Authority was not persuaded of Mr Good's other claims on good faith or his status. The Authority reserved the issues of costs and encouraged the parties to try to resolve the issue themselves. They have been unable to do so and the Authority is now asked to determine the matter.

[4] This determination has been issued outside the timeframe set out at section 174C(3)(b) Employment Relations Act 2000 (the Act), where the Chief of the Authority considers exceptional circumstances exist. As permitted under section 174E of the Act, not all the evidence or information received has been recorded. Rather, this determination makes findings of fact and law and sets out conclusions on the issues necessary to dispose of the Applicant's claims.

[5] Mr Good led six witnesses and his own evidence was substantial and very detailed. The Board called nine witnesses in defence of the claims Mr Good made against it.

[6] There was very considerable documentary evidence produced to the Authority for its consideration. I accept that the Respondent's representative had been extensively involved in the collation and presentation of multiple volumes of documentary evidence. That preparation of the documentary evidence was of considerable assistance to the Authority.

The Board's claim for costs

[7] The Board now seeks costs in the sum of \$12,500.00 against Mr Good on the basis of the Authority's daily tariff approach being \$4,500.00 for day one and \$3,500.00 for each of the following investigation meeting days. It is this \$11,500.00 together with a contribution of \$1,000.00 to its reasonable disbursements that is now sought.

Mr Good's response on costs

[8] Mr Good responds to the Board's claim for costs against him. He reminds the Authority of his impecunious personal circumstances and that his advocate provided representation services on an entirely *pro bono* basis. He informs the Authority that he was previously forced to sell his family home and that his career has now ended. He says he has been unable to find new employment and his family survives on his wife's modest earnings and superannuation. He summarises his position, he and his family

now live in a precarious financial state and consequently, he is simply unable to meet any costs that might be ordered to pay.

The Authority's approach on costs

[9] Clause 15 of the 2nd Schedule to the Employment Relations Act 2000 gives the Authority a wide discretion to order a party to pay another party's costs and disbursements as the Authority thinks reasonable.

[10] The principles for assessing and awarding costs in the Authority are so well established that there is no need to set out all of these factors here, see *PBO Ltd (formerly Rush Security Ltd) v D Cruz*¹.

[11] The Authority applies a 'notional daily tariff' based approach to assessing costs. The current notional daily tariff is \$4,500.00 for the first day of an investigation meeting and \$3,500.00 for each subsequent day.

[12] That approach gives the Authority a notional starting tariff, which must then be adjusted to reflect the particular circumstances of each case. There is therefore no need to adopt any other costs regime as the Authority can adjust the notional daily tariff, on a principled basis, as required.

[13] The Authority's notional daily tariff based approach is widely understood by those appearing in the employment institutions. The notional daily tariff basis approach to costs reflects the Authority's unique investigatory and problem solving role and it is an approach that has been endorsed by the Employment Court.

[14] The 'notional daily tariff' is the approach that has been used for assessing costs in this matter.

The result

[15] I have concluded that the Board's response to Mr Good's claims was conducted efficiently and economically. I also have a very clear view that Mr Good is now impecunious and as he puts it, in a precarious financial state. Having particular regard to those factors, I consider it appropriate to make a reduction downwards from the notional daily tariff.

¹ [2005] 1 ERNZ 808.

[16] It is appropriate that costs follow the event and the Board should have a contribution to its costs. But in good conscience I consider that contribution ought to recognise the reality that Mr Good is likely impecunious and financially precarious. I am not persuaded to make an award of costs that would likely have a profoundly punitive effect on Mr Good. It seems to me that having regard to the conventional factors and in good conscience, Mr Good ought to make a contribution to the Board's costs in the sum of \$3,500.00.

[17] Accordingly, I order Mr Good to pay to the Pukekohe High School Board of Trustees the sum of \$3,500.00 (Three thousand and five hundred dollars).

Leon Robinson
Member of the Employment Relations Authority