IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2023] NZERA 513
3171822
3190479

BETWEEN	TE MANAWA O TUHOE TRUST Applicant/Respondent
AND	TANIA McDONNELL Respondent/Applicant

Member of Authority:	Eleanor Robinson
Representatives:	Scott McKenna, counsel for the Applicant/Respondent Stan Austin, counsel for the Respondent/Applicant
Costs Submissions:	17 August and 7 September 2023 from the Applicant/Respondent 27 August 2023 from the Respondent/Applicant
Determination:	8 September 2023

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The determination dated 25 July 2023 ([2023] NZERA 394 determined claims that both Ms McDonnell and Te Manawa O Tuhoe Trust (TMOT) had breached a Record of Settlement entered into by them on 28 January 2022: Ms McDonnell by claiming she was still an employee of TMOT and by TMOT making disparaging remarks about Ms McDonnell.

[2] In the determination the Authority found that Ms McDonnell was not an employee of TMOT following the Record of Settlement and issued a penalty in respect of, and a compliance order for, the return of any property she retained belonging to TMOT. It was also determined that TMOT had not made disparaging remarks about Ms McDonnell.

[3] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately, they have been unable to do so, and both parties have filed memoranda in respect of costs.

[4] The investigation meeting was held by Zoom and heard submissions on behalf of TMOT and Ms McDonnell. It involved less than a half day of investigation meeting time.

[5] Mr McKenna on behalf of TMOT as the successful party is seeking costs at the usual tariff rate in the Authority.

[6] Mr Austin on behalf of Ms McDonnell, submits that costs should "lie where they fall" and noted that TMOT had applied for costs outside of the Authority's requirements and without including in its submission on costs a breakdown of how and when costs were incurred. Mr Austin in the alternative requests that the daily tariff is lowered to 20 percent to reflect the time taken for the investigation meeting.

[7] On 8 September 2023 Mr McKenna applied for leave to submit TMOT's submission on costs outside of the Authority's indicated timetable on the basis of ill health and technology issues. A brief explanation to how TMOT's costs were incurred was also supplied.

Costs Award

[8] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*[1] that costs are modest. Principles also include that costs are reasonable and that they normally follow the event.

[9] I see no reason for not applying these principles in this case. TMOT was the successful party in the matter.

[10] Costs in the Authority are made in accordance with a daily tariff amount which is currently set at $4,500.00 for the first day of hearing. Costs normally follow the event and TMOT is entitled to a contribution towards its costs.

[11] I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take into consideration the duration of the Zoom investigation meeting.

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[1] [2005] 1 ERNZ 808.

[12] Accordingly, Ms McDonnell is ordered to pay TMOT the sum of $1, 850.00 towards its legal costs, pursuant to clause 15 of Schedule 2 of the Act.

Filing Fee

[13] Ms McDonnell is also ordered to reimburse TMOT the filing fee of $71.56.

Eleanor Robinson
Member of the Employment Relations Authority