

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI Ā TARA ROHE**

[2023] NZERA 586
3151825 and 3211919

BETWEEN	LEON THOMPSON Applicant
AND	EDWARDS & HARDY HAWKES BAY LIMITED Respondent

Member of Authority:	Sarah Kennedy-Martin
Representatives:	Dave Cain, advocate for the Applicant Murray Grant, counsel for the Respondent
Submissions received:	10 July 2023 from Applicant 20 June 2023 from Respondent
Determination:	10 October 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 31 January 2023 I found that Edwards & Hardy Hawkes Bay Limited (E&H) had justified its actions and Mr Thompson was unsuccessful with his personal grievance claim that he was unjustifiably dismissed.¹

[2] E&H also applied for a non-publication order of a considerable amount of material set out in the substantive determination that it said was commercially sensitive material.² In order to achieve this it applied for a re-opening of the investigation.

[3] The Authority reserved the issue of costs until the non-publication matter was concluded and encouraged the parties to resolve the issue of costs between them.

¹ *Thompson v Edwards & Hardy Hawkes Bay Limited* [2023] NZERA 46.

² *Edwards & Hardy Hawkes Bay Limited v Thompson* [2023] NZERA 275.

Following on from this the Authority has now received submissions from both parties seeking a determination on costs.

Costs

[4] Costs are a matter of discretion. The discretion is to be exercised in accordance with principle and not arbitrarily. The main principle in the exercise of the discretion is that costs follow the event. If a party is successful, they will be entitled to an award of costs. The Respondent was successful in justifying its actions and the claims set out in the statement of problem were not made out.

[5] The starting point for costs based on the Authority's daily tariff is \$4,500.00 for the first day. From that starting point the Authority can consider whether there are factors justifying an increase or decrease in costs.

Submissions

[6] The Respondent submits the Authority's daily tariff represents an appropriate award for costs in this matter despite the fact tariff costs do not represent even a fraction of the costs the Respondent has had to incur to defend an unsuccessful claim.

[7] With regard to the application for non-publication, the Respondent submits no further reduction is appropriate because the Applicant consented to the redactions that were the subject of that application. Noting that the hearing finished early, the Respondent says a day was set aside and but for the Applicant choosing not to bring a witness he had intended to call and who was expected to attend, the full day would have been needed. It is also noted new evidence surfaced at the end of the investigation meeting about the Applicant's loss after the employment ended and this required further investigation.

[8] The Applicant submits a costs award in an amount equivalent to the Authority's notional daily tariff for three quarters of a day is appropriate given the investigation meeting finished early. He also says E&H should have sought non-publication orders at the meeting and this justifies a further reduction such that the costs award should be reduced to \$1,150.00.

Conclusion

[9] The Authority's investigation meeting amounted to three quarters of a day. The starting point based on the notional daily tariff is \$3,375.00. I consider that a small uplift is justified given a full day would have been utilised had the additional witness appeared and the Respondent would have incurred cost in preparing for cross examination. While I note an application could have been made by the Respondent for non-publication prior to the determination being issued, I do not consider a reduction in costs is appropriate. The Respondent was in the position of needing to make such an application because of the claims advanced in the statement of problem by the Applicant and ultimately these were unsuccessful.

[10] The non-publication matter was concluded on the papers.

[11] The Respondent was the successful party and is entitled to an award of legal costs. I consider that an award for costs in the amount of \$4,500.00 covering both matters is appropriate.

Orders

[12] I order Leon Thompson to pay \$4,500.00 in costs to Edwards & Hardy Hawkes Bay Limited.

Sarah Kennedy-Martin
Member of the Employment Relations Authority