

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 725
3122492

BETWEEN

FIONA ANDERSON
Applicant

AND

GLENFIELD COLLEGE
BOARD OF TRUSTEES
Respondent

Member of Authority: Marija Urlich

Representatives: Gary Pollak, counsel for the Applicant
Paul Pa'u, advocate for the Respondent

Investigation Meeting: On the papers

Determination: 6 December 2023

DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination on 6 November 2023 which found Ms Anderson had established a personal grievance for unjustifiable dismissal and that wage arrears were owing.¹ Glenfield College Board of Trustees (the Board) was ordered to pay Ms Anderson compensatory damages and wage arrears and calculate and pay interest on those arrears. Costs were reserved and a timetable set if the parties were unable to resolve this issue themselves which they advise has not been possible.

Costs principles

[2] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

¹ *Fiona Anderson v Glenfield College Board of Trustees* [2023] NZERA 654.

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.

Ms Anderson's claim for costs

[3] Ms Anderson seeks an award of \$20,250 as a contribution to costs incurred and reimbursement of the filing fee being \$71.56. The Authority is satisfied she has incurred total costs in excess of this amount. Ms Anderson submits the award sought is warranted given:

- as the successful party costs should follow the event;
- there were three days of investigation meeting and therefore the starting point for costs is \$11,500 by application of the daily tariff;
- an uplift in the daily tariff of \$2,000 is appropriate because she unnecessarily incurred costs in relation to the Board's counterclaim which was withdrawn without explanation immediately before the start of the first investigation; and
- a further uplift of 50% is warranted given the Board's conduct towards her during her employment and during the course of the investigation of her employment relationship problem including filing bundles of new documents before the investing meeting most of which she had not seen before.

The Board's response

[4] The Board submits costs should be determined by application of the usual process and that a costs award of \$8,000 is appropriate. It submits no uplift should be ordered because the counterclaim was made in good faith, the reasons for withdrawal

were explained in evidence and costs should not be used as a punishment or expression of disapproval.

Costs analysis

[5] Ms Anderson was the successful party and it is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party's costs. Ms Anderson should receive a contribution to costs which the Authority is satisfied were reasonably incurred. The notional daily tariff is a starting point. The applicable daily tariff is \$4,500.00 with each subsequent day at \$3,500.00.

[6] While this matter involved an investigation meeting of one day before me the Board submits the starting point for costs assessment should be \$8,000, which in my view is appropriate. The additional costs incurred by the parties due to the change in Member are to be borne by each party because they are not responsible for that situation. There should be an uplift for the Board's conduct in filing significant bundles of documents prior to the investigation meeting which has put Ms Anderson to further expense. An uplift of \$1,000 is appropriate. Ms Anderson is entitled to be reimbursed for the filing fee cost of \$71.56.

Outcome

[7] Glenfield College Board of Trustees is ordered to pay Fiona Anderson \$9,000 as a contribution to costs incurred and \$71.56 as a contribution to disbursements incurred.

Marija Urlich
Member of the Employment Relations Authority