

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 438  
3236159

BETWEEN

NICOLA NABIH  
First Applicant

NUMBER 8 WORKERS UNION OF  
NEW ZEALAND INCORPORATED  
Second Applicant

AND

METHVEN AGED PERSONS  
WELFARE ASSOCIATION  
INCORPORATED  
First Respondent

AND

MINISTRY OF HEALTH  
Second Respondent

Member of Authority: Antoinette Baker

Representatives: Liz Lambert, advocate for the Applicant  
Hamish Kynaston, counsel for the Second Respondent

Submissions received: 24 June 2024 from the Applicant  
18 July 2024 from the Respondent

Determination: 22 July 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] The second respondent has applied for a contribution to its costs following a determination I made declining to join it as a ‘controlling third party<sup>1</sup>’ to the substantive

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<sup>1</sup> Employment Relations Act 2000, s103B.

proceedings regarding Ms Nabih's challenge to her dismissal from her employment with the first respondent.<sup>2</sup> The issue of costs was reserved.

[2] Both parties lodged submissions. The second respondent asks for costs based on its successful defence based on the current first day tariff for costs in the Authority being \$4,500.00. This is based on the amount of time it says was spent preparing a response to defend the application. For Ms Nabih it is submitted that because she disagrees with the determination and is now challenging this, and because Ms Nabih is retired and without funds since finishing her employment based on medical reasons, I should either decline the costs application or use my discretion to allow costs to lie where they fall.

[3] I note further that a stay has not been applied for in these proceedings in relation to the second respondent's application for costs, so I will proceed to complete this determination.

[4] Clause 15 of Schedule 2 of the Act empowers the Authority to order costs to any party as the Authority thinks reasonable. A party should receive a reasonable contribution to costs incurred in achieving a successful result. Costs are discretionary, modest, and are not a mechanism to punish the other party. Some cases may require costs to lie where they fall.<sup>3</sup>

[5] The Authority uses a notional daily tariff<sup>4</sup> as the starting point for assessing costs. The tariff is based on the length of the investigation meeting held in each matter. This tariff may then be adjusted upwards or downwards according to the circumstances of each case considering things like a liable party's means to pay costs, additional preparation required if a case is complex, and any conduct of a party that has unnecessarily increased costs.<sup>5</sup>

[6] I am not satisfied that I should not make an award of costs here or as submitted for Ms Nabih, let costs lie where they fall. The defence to the joining application was successful. The submissions for Ms Nabih express strong views about the second respondent and clearly

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<sup>2</sup> *Nabih, Number 8 Workers Union of New Zealand v Methven Aged Persons Welfare Association Inc & The Ministry of Health* [2024] NZERA 321.

<sup>3</sup> *Employment Relations Act 2000*, Schedule 2, clause 15 and *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme and Co Limited* [2015] NZEmpC 135 at 106-108.

<sup>4</sup> The current tariff applied for a one-day Authority investigation meeting is \$4,500.00 for the first day and \$3,500.00 for each additional day.

<sup>5</sup> <https://www.era.govt.nz/determinations/awarding-costs-remedies/>.

disagrees with my determination. However, that does not mean that I should not award a level of contribution to its costs. I have little evidence before me as to Ms Nabih's financial situation but accept in her circumstances she has likely been without employment for some time.

[7] I acknowledge the submission for the second respondent that it incurred costs preparing to defend the application given the submissions and affidavit evidence it provided which were helpful. However, considering that the preliminary matter was dealt with 'on the papers' and that the usual tariff for costs in the Authority attaches to the time frame taken of an investigation meeting and the preparation and attendance thereof, I find that a contribution to the second respondent's costs at half of the first day tariff is appropriate in the circumstances.

### **Order**

[8] Within 28 days of this determination, Ms Nabih is ordered to pay The Ministry of Health, \$2,250.00 as a contribution to its costs.

Antoinette Baker  
Member of the Employment Relations Authority