

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2024] NZERA 550  
3270939

BETWEEN

MARIKA PRETORIUS  
Applicant

AND

TAUPO INTERMEDIATE  
SCHOOL (SCHOOL BOARD)  
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Liz Lambert, advocate for the Applicant  
Kiri Harkness and Oliver Floodsmith-Ryan, counsel for  
the Respondent

Submissions received: 19 July 2024 from Applicant  
22 July from Respondent

Determination: 11 September 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a preliminary determination dated 25 June 2024 I found Ms Pretorius could not pursue a claim against Taupo Intermediate School (TIS) her former employer, because the Authority lacked jurisdiction to hear Ms Pretorius' common law wrongful dismissal claim. Leave to amend the statement of problem was also declined because of a current de novo challenge to a previous Authority determination dealing with her personal grievance claims arising from the same facts.<sup>1</sup>

[2] Applications were also made by TIS to strike out the proceeding for abuse of process and/or to dismiss the proceedings on the basis they were frivolous or vexatious. This was based on the fact there has already been a previous Authority determination

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<sup>1</sup> *Pretorius v Taupo Intermediate School* [2024] NZERA 377.

dealing with Ms Pretorius' dismissal and the new proceedings in the Authority were lodged after the Employment Court stayed her challenge until such time as security for costs was paid.

[3] The Authority reserved the issue of costs and encouraged the parties to resolve the issue of costs between them. 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 starting point 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.

[5] This matter was dealt with on the papers. When a party has incurred costs for representation by a lawyer or other advocate, the Authority may order whichever party is unsuccessful to contribute to any reasonably incurred costs of the other party.<sup>2</sup>

### **Submissions**

[6] TIS says costs should be fixed at a rate that is half the daily tariff for the first day of an investigation meeting in the amount of \$2,250.00. It is submitted this is a reasonable amount for a preliminary matter that was able to be resolved on the papers.

[7] Ms Pretorius asks the Authority to reserve costs until the hearing of her Employment Court challenge. It was submitted the Authority should be aware of Ms Pretorius' impecunious situation arising from events that flowed from her dismissal from TIS and that success with her Employment Court challenges are her best chance at recouping her costs. The likely success of Ms Pretorius' challenge was also referred to.

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<sup>2</sup> [Awarding remedies and costs | Employment Relations Authority \(era.govt.nz\)](#)

## **Conclusion**

[8] The Authority's investigation was conducted on the papers and TIS was successful in that Ms Pretorius' claims could not proceed against it. TIS was the successful party and is entitled to an award of costs. I accept costs were incurred by TIS.

[9] I do not consider this preliminary matter heard on the papers merits a starting point equivalent to the daily tariff for first day of an investigation meeting and adopt as a starting point \$2,250.00.

[10] Although Ms Pretorius' financial situation was referred to, no evidence was lodged therefore I am not able to consider an adjustment for that. There were no factors that justified any uplift. Ms Pretorius' potential success with her Employment Court challenge is not a matter I can consider. I am unable to assess the merits of that claim as I was invited to do.

[11] TIS was the successful party and is entitled to an award of legal costs. With no factors justifying any uplift or decrease, I consider that an award for costs in the amount of \$2,250.00 to be an appropriate.

## **Orders**

[12] I order Marika Pretorius to pay \$2,250.00 in costs to Taupo Intermediate School (the Board) within 28 days of this determination.

Sarah Kennedy-Martin  
Member of the Employment Relations Authority