

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA
TAIMAHI ŌTAUTAHI ROHE**

[2024] NZERA 618
3276379

BETWEEN

CHRISTINE PETERS
Applicant

AND

MARLBOROUGH FREE
KINDERGARTEN
ASSOCIATION
INCOPORATED
Respondent

Member of Authority: Antoinette Baker

Representatives: Maryline Suchley, advocate for the Applicant
Paul Robertson and Ashley Wainstein, counsel for the
Respondent

Determination: 15 October 2024

COSTS DETERMINATION OF THE AUTHORITY

Costs

[1] I issued a Determination on 11 September 2024¹ finding that the applicant, Ms Peters was unable to continue her claims due to having settled all matters with the respondent (MKA). I found she was both estopped and had reached a full and final settlement. I found it was unconscionable for Ms Peters to renege on this settlement to make the claims she sought to progress in the Authority.

[2] The parties were asked to resolve costs between themselves. Costs have not been resolved. MKA has now asked for an award of costs. Ms Peters was given time to reply to the applicant's costs application and did so. I will now consider the application.

¹ *Peters v Marlborough Free Kindergarten Association Incorporated* [2024] 549.

[3] The Authority has the discretionary power to award costs.² A party should receive a reasonable contribution to costs incurred in achieving a successful result. Costs are discretionary, modest, and not a mechanism to punish the other party.

[4] The Authority uses a notional daily tariff adjusting the tariff up or down as appropriate depending on the case. Such an adjustment may take into consideration a liable party's means to pay costs, settlement offers made by either party, additional preparation required if a case is complex, and any conduct of a party that has unnecessarily increased costs.³

[5] The current tariff applied for a one-day Authority investigation meeting is \$4,500.00. This amount is considered a starting point for assessing a reasonable contribution to the legal costs incurred by a party preparing for and taking part in an investigation meeting but not including preparation and attendance at mediation. The investigation meeting for the substantive matter took until after 3 pm. I regard this as a full day. The starting point is therefore \$4,500.00.

Should there be an uplift or reduction to the starting point?

[6] It is submitted for MKA that I should award an uplift of '50%' to the daily tariff of \$4,500.00 being a total contribution of \$6,750.00. This is based on Ms Peters raising grievances through her representative when she ought to have known she settled all matters and chose to ignore the 'careful' responses from MKA. Those responses were either directly or then through counsel to Ms Peters' representative referring to case law and the clause in the settlement document that Ms Peters signed that referred to matters being final and binding whether or not signed by a mediator. It is also submitted for MKA that I also made comment about Ms Peter's needing to consider this aspect in a pre-investigation meeting phone conference call. In short the uplift is claimed because MKA says that given these 'warnings,' Ms Peters' still continued with claims that were 'hopeless' and 'always doomed to fail'.

[7] In response it is submitted for Ms Peters that at the time that her employment came to an end I should take into consideration that Ms Peters 'was genuinely under the impression that mediator sign off was required for the ROS to be binding hence her refusal to let the mediator sign the record of settlement.' I note that Ms Peters was

² Employment Relations Act 2000, Schedule 2, cl 15.

³ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

represented if not when she engaged with the mediator then soon after when grievances were raised. I do not therefore find that this submission assists me greatly. It is further submitted for Ms Peters that costs incurred by MKA could have been avoided if it had agreed to engage in discussions as to Ms Peter's claims and make an offer to settle. In short, for Ms Peters it is submitted that 'had mediation taken place the matter may have resolved with no need to lodge an application.' I find this speculative at best.

[8] Standing back from the above, I do not find it appropriate to award an uplift. Ms Peters remained entitled to bring her application to be heard. It was not in the category of frivolous or vexatious. Equally MKA was entitled to stand by its position when Ms Paters raised her grievances and I do not find persuasive the submission for Ms Peters that there should be a reduction to the day tariff because MKA did not engage in discussions or offer settlement.

Should an award of costs be subject to time payments?

[9] It is submitted for Ms Peters that any award for costs should be subject to a method of time payment. I have been provided with copy of a letter of offer of employment to Ms Peters. This relates to a job on fixed term employment with a wage figure included. I find this evidence falls well short of the sort of evidence that satisfies me someone should have a period of time to pay off a costs' award. I have nothing to support Ms Peter's overall ability to pay costs in terms of her assets and liabilities. Accordingly, I make no award based on time payments.

Outcome

[10] Within 28 days of the date of this determination, Christine Peters is to pay Marlborough Free Kindergarten Association \$4,500.00 as a contribution towards its costs in this matter.

Antoinette Baker
Member of the Employment Relations Authority