

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2024] NZERA 750
3203959

BETWEEN

DAHLEA REISIMA
Applicant

AND

THE CHIEF EXECUTIVE OF
ORANGA TAMARIKI -
MINISTRY FOR CHILDREN
Respondent

Member of Authority: Andrew Gane

Representatives: Allan Halse, advocate for the Applicant
Hamish Kynaston and Claudia van Zijl, counsel for the
Respondent

Submissions received and other material: 7 August and 16 October 2024 from the Applicant
21 August 2024 from the Respondent

Determination: 16 December 2024

COSTS DETERMINATION OF THE AUTHORITY

Background

[1] In a determination issued 6 December 2023 I found Dahlea Reisima was unjustifiably disadvantaged by the Chief Executive of Oranga Tamariki - Ministry for Children (Oranga Tamariki), and I awarded compensation.¹

[2] Costs were reserved and the parties were encouraged to resolve any issues of costs between themselves. The parties have been unable to resolve costs.

¹ *Reisima v Chief Executive Oranga Tamariki-Ministry for Children* [2024] NZERA 222

[3] Ms Reisima seeks an order for costs against Oranga Tamariki. Ms Reisima seeks payment of \$11,500 for a three day investigation meeting.

[4] Oranga Tamariki submitted costs should lie where they fall.

The Parties' Submissions

Ms Reisima's submissions

[5] Ms Reisima submits she was successful in one of her unjustified disadvantage claims and the Authority ordered Oranga Tamariki to pay her \$12,000 for compensation pursuant to s 123(1)(c)(i) of the Act.

[6] Ms Reisima therefore sought costs of \$11,500, on a daily tariff basis for three days of investigation meeting conducted from 13 to 15 November 2023 in Palmerston North.

[7] Ms Reisima submitted the case involved a significant amount of work by her representative leading up to the lodging of the statement of problem and preparation for the investigation meeting.

Oranga Tamariki's submissions

[8] Oranga Tamariki submitted the Authority is guided by the well-established legal principles summarised in leading Employment Court cases about costs awards in the Authority.² It also submitted that although Ms Reisima was successful in one of her grievances, she was unsuccessful in 15 of her 16 claims, not including other claims which were unsuccessful because they were out of time. She was also unsuccessful in her overarching claim that she had been bullied by the managers at Te Au Rere a Te Tonga.

[9] Oranga Tamariki submitted that responding to these other claims took up by far the majority of the preparation and attendance time at the investigation meeting.

[10] Oranga Tamariki submitted that in the circumstances it would be consistent with the established principles for costs to lie where they fall.

² *PBO Limited v Da Cruz* [2005] 1 ERNZ 808, pages 819 to 820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135.paragraphs [105] to [115].

Analysis

Costs in the Authority

[11] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Employment Relations Act 2000.

Costs follow the event

[12] The usual principle for costs is that a successful party is entitled to a contribution towards their representation costs and I find there is no reason to depart from that.

Mixed success

[13] The question of mixed success and an applicant's entitlement to costs has been resolved by the Employment Court.³ The position is that any success for an applicant is sufficient success for the purposes of costs.

[14] It is acknowledged that Ms Reisima was successful in one grievance claim out of a total of sixteen claims. Although Oranga Tamariki submitted Ms Reisima's one successful claim was dealt with relatively easily, her claim was for a disciplinary matter sufficiently distinct from her other unsuccessful claims which related to allegations of bullying and managerial behavioural issues throughout the employment relationship. For this reason, she is entitled to an award of costs.

[15] It is a principle that costs are not to be used as a punishment. Awards made should be modest, and consistent with the Authority's equity and good conscience jurisdiction.⁴ Mixed success is also relevant to the application of the daily tariff, and it is appropriate for me to consider in this case whether a reduction to the daily tariff amount is reasonable.

Application of the daily tariff

[16] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500. for the first day of hearing, and \$3,500. for subsequent hearing days.

³ *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

⁴ *PBO Limited v Da Cruz* [2005] 1 ERNZ 808, pages 819 to 820

[17] The investigation meeting in this matter was for three days. The costs based on the tariff would be \$11,500.

Adjusting the daily tariff

[18] The daily tariff can be adjusted for relevant factors. Stepping back to look at matters overall it is reasonable in the “mixed success” circumstances of this case that there is a modest reduction of the costs awarded. I consider a reduction of one subsequent day’s tariff (\$3,500) reflects recognition that Ms Reisima was successful in only one of her claims. I consider \$8,000 represents a fair and appropriate costs award.

Order

[19] The Chief Executive of Oranga Tamariki - Ministry for Children is to pay Dahlea Reisima \$8,000 as a contribution to her costs in this matter.

[20] Dahlea Reisima is entitled to be paid the filing fee, so the Chief Executive of Oranga Tamariki - Ministry for Children must also pay her \$71.55.

Andrew Gane
Member of the Employment Relations Authority