

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 90
3287719

BETWEEN CLAIR MCCONCHIE
Applicant

AND ST ALBANS COMMUNITY
PRESCHOOL INCORPORATED
Respondent

Member of Authority: Peter van Keulen

Representatives: Maryline Suchley, advocate for the Applicant
William Fussey, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 7 January 2025 from the Applicant
17 December 2024 from the Respondent

Date of Determination: 19 February 2025

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 26 November 2024, I found that St Albans Community Preschool Incorporated (the Preschool) had not breached terms of a record of settlement between it and Clair McConchie.¹

[2] In my determination I reserved costs so that the parties could try to agree costs. The

¹ *Clair McConchie v St Albans Community Preschool Incorporated* [2024] NZERA 705.

parties were unable to agree and now the Preschool seeks an order for costs.

Application for costs

[3] The Preschool seeks an award of costs of \$4,500 based on the application of the Authority's daily tariff for one day.²

[4] This matter was determined on the papers so the daily tariff is not directly applicable. In this regard, counsel for the Preschool submits that one day of the daily tariff for costs is the equivalent to the amount of time spent dealing with this matter on the papers.

[5] The advocate for Ms McConchie accepts that costs should follow the event and that using the daily tariff adapted for an on the papers investigation is appropriate. The advocate says however that any costs award should be modest and Ms McConchie's financial circumstances are such that she will be unable to pay except if a payment plan is ordered over a period of two years.

Analysis

Costs in the Authority

[6] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.³

Costs for the Preschool

[7] The starting point is that costs should follow the event. As the employment relationship

² The normal practice of the Authority when setting costs, is to apply a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff.

³ For further information about the factors considered in assessing costs, see:

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

problem was resolved in favour of the Preschool it is entitled to an award of costs.

Applying the daily tariff

[8] I accept that it is appropriate to apply the daily tariff to costs in this matter. I will do that by assessing what the on the papers work corresponds to in terms of an investigation meeting i.e. is it the equivalent amount of work for a one-day investigation meeting or some other proportion.

[9] The starting point of my assessment is that if this matter had been subject to an investigation meeting that would have taken one day (or possibly less). The daily tariff for one day represents a contribution for all costs associated with dealing with an employment relationship problem and attending at the investigation meeting. In the case of the Preschool that would include advice on the problem, preparing the statement in reply, attending on a case management conference, considering the evidence both documentary and witness evidence, preparing evidence (so providing documents and witness statements), preparing for attendance at the meeting including preparing cross examination and submissions, and the attendance for one day.

[10] In contrast the work required for this matter on the papers would likely include advice for their client, attending to the case management conference, assessing and preparing the evidence and submissions. Counsel did not need to attend to matters connected with in person attendance at an investigation meeting, such as preparing cross examination and they did not spend time in an investigation meeting.

[11] Overall given my assessment and comparison of the work involved I conclude that a half day of the daily tariff is appropriate. That is \$2,250.

Adjusting the daily tariff

[12] From this point I need to consider whether the daily tariff amount should be adjusted.

[13] I am not satisfied that there is a basis to reduce the daily tariff for the financial reasons set out by Ms McConchie's advocate.

Order

[14] Ms McConchie is to pay the Preschool \$2,250.00 as a contribution to its costs in this matter.

[15] I make no additional orders about a timeframe for total payment or instalments over time at this stage. I leave it to the parties in the first instance to negotiate a payment plan and if that fails then they can come back to the Authority for assistance with setting payments, by way of a variation to my order.

Peter van Keulen
Member of the Employment Relations Authority