

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 563  
5425162

BETWEEN

SYLVIA ANDERSEN  
Applicant

A N D

WAIKATO DISTRICT  
HEALTH BOARD  
Respondent

Member of Authority: James Crichton

Representatives: Simon Scott, Counsel for Applicant  
Gregory Peplow, Advocate for Respondent

Submissions Received: 25 October 2013 from Applicant  
No submissions from respondent

Date of Determination: 10 December 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive decision**

[1] The Authority's substantive decision in this matter issued as [2013] NZERA Auckland 386 on 28 August 2013.

[2] In that determination, the Authority decided that Ms Andersen had validly raised a personal grievance within time or in the alternative was entitled to a grant of leave so as to be allowed to raise the grievance out of time.

[3] Costs were reserved.

**The application for costs**

[4] Submissions for Ms Andersen indicate that she incurred costs of \$3,450 (inclusive of GST) together with disbursements of \$136.56, inclusive of the Authority's filing fee.

[5] Ms Andersen's submissions note the Authority's traditional daily tariff approach but seek an uplift so as to recover costs on a full indemnity basis. The Authority's investigation meeting took a half day and so on general principles, the Authority's starting point for a costs fixing exercise would be a figure of \$1,750.

[6] The uplift advocated by the applicant is justified on the footing that the respondent District Health Board's position was *in reality hopeless*, but notwithstanding that they chose to put Ms Andersen to the expense of a hearing, and that their behaviour in not addressing the timeliness of the personal grievance raising exacerbated the problem.

### **The response**

[7] There has been no response whatever from the District Health Board and accordingly, the Authority must rely exclusively on Ms Andersen's submissions which presumably the respondent District Health Board would have commented on if they took exception to the conclusions advanced therein.

[8] Certainly, the respondent District Health Board was given ample opportunity by the Authority's Support Officer to engage in the Authority's costs fixing process, and despite the Authority leaving an ample gap after the date set for submissions from the Board had closed, nothing has been forthcoming.

### **Determination**

[9] The law on costs fixing in the Authority is well settled and need not be recited again here. The Authority frequently adopts a daily tariff approach in order to fix costs. The starting point in the present case, as the Authority has already mentioned, would be \$1,750.

[10] But an uplift is sought by the successful applicant. In the Authority's opinion, that uplift is amply justified. While the Authority accepted in its substantive determination that the initial personal grievance letter was not legally a complete raising of the grievance, the Authority was quite clear that the behaviour of the respondent Board was to condone the failure. The initial letter purporting to raise the grievance is dated 23 January 2013. There was extensive contact between the parties from that date. The Board made no suggestion that the grievance was not properly raised until the eleventh hour, almost six months after the dismissal.

[11] As the Authority noted in its determination on the substantive issue, it is difficult to see why *a large well resourced organisation with an extensive human resources department* would not have raised the unsatisfactory nature of the personal grievance letter unless they condoned it.

[12] In those circumstances, where the Board's condonation of an imperfect communication has effectively perfected that communication, it cannot be fair or just to allow the Board to now change its position. That being the position, the Authority considers the argument for an uplift in the daily tariff is well justified.

[13] Ms Andersen was put to the expense of arguing her claim in the Authority through counsel when, in the Authority's opinion, a more practical approach from the respondent Board would have been to deal with the merits of her personal grievance.

[14] The Authority directs that Waikato District Health Board is to pay to Ms Andersen the sum of \$3,571.56 as a contribution to her costs being a global amount representing the daily tariff of \$3,500, together with Authority's filing fee.

**James Crichton**  
**Member of the Employment Relations Authority**