

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 295  
5427773

BETWEEN                      DEBBIE BAKER  
   Applicant  
  
A N D                              COUNSELLING SERVICES  
   CENTRE  
   Respondent

Member of Authority:      T G Tetitaha  
  
Representatives:              A Singh, Counsel for Applicant  
   M Dearing, Counsel for Respondent  
  
Submissions Received:      11 June 2014 for the Applicant  
   4 July 2014 for the Respondent  
  
Date of Determination:      11 July 2014

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A.      The application for costs is dismissed.**

**Employment relationship problem**

[1]      In its substantive determination dated 9 May 2014 the Authority held that the applicant was unjustifiably dismissed.<sup>1</sup> There was no award of remedies.

[2]      The applicant now applies for indemnity costs.

[3]      The Member dealing with the substantive determination has now retired. In the circumstances, the Chief of the Authority has required me to investigate the application for costs pursuant to s.166A of the Employment Relations Act 2000 (the Act).

**Issues**

[4]      The following issues are to be determined:

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<sup>1</sup> [2014] NZERA Auckland 178

- a. Should the applicant be awarded indemnity costs?
- b. If no, what is the starting point for assessing costs?
- c. Are there any factors that warrant adjusting the notional daily tariff?

**Should the applicant/respondent be awarded indemnity costs?**

[5] The applicant seeks an award of indemnity costs. His submissions do not address the legal basis for seeking indemnity costs. Indemnity costs are exceptional so require “*exceptionally bad behaviour*” or may be awarded where a party has behaved either badly or very unreasonably.<sup>2</sup>

[6] From a perusal of the file and determination, this matter does not appear to meet the very high threshold required before indemnity costs may be imposed.

**What is the starting point for assessing costs?**

[7] The Authority shall adopt its usual notional daily tariff based approach to costs.<sup>3</sup> The current notional daily tariff is \$3,500. This matter involved a half day investigation meeting. The starting point for assessing costs is therefore \$1,750.

[8] The applicant has not filed copies of her legal invoices or indicated what her actual legal costs were. The reasonableness of a party’s actual costs incurred must be assessed prior to any award of costs. I have no indication of what the applicant’s actual legal costs were. There were no invoices filed nor any breakdown of the costs incurred provided.

[9] The parties were directed to file their costs submissions within 28 days from the date of the determination. No further time for filing evidence shall be given.

[10] The basis for awarding costs in the Authority is a reasonable contribution to costs reasonably incurred. The Authority must make assessments, first, of what costs were actually incurred; second, the reasonableness of them in all the circumstances;

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<sup>2</sup> *Bradbury & Ors v. Westpac Banking Corporation* [2009] NZCA 234  
<sup>3</sup> *Mattingly v Strata Title Management Ltd* [2014] NZEmpC 15 at [16]

and finally, what should be a reasonable contribution to those costs reasonably incurred, in all the circumstances of the parties and the case<sup>4</sup>.

[11] The lack of evidence about the applicant's actual costs incurred has left the Authority in the position of being unable to properly assess costs.

[12] Accordingly, the application fails for lack of an evidential basis for assessing costs. Given this determination, there is no need to consider the third issue.

[13] The application for costs is dismissed.

**T G Tetitaha**  
**Member of the Employment Relations Authority**

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<sup>4</sup> *Eastern Bay Independent Industrial Workers' Union Inc v Pedersen Industries Ltd (No 2)*  
EmpC Auckland AC11B/09, 10 June 2009