

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 126
5551213

BETWEEN

RABAH BASHIR
Applicant

A N D

LADBROOK LAW LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: The Applicant in person
S J Neville, Counsel for the Respondent

Investigation Meeting: On the papers

Submissions: 21 March 2016 from the Applicant
21 March 2016 from the Respondent

Date of Determination: 27 April 2016

COSTS DETERMINATION OF THE AUTHORITY

- A. Ladbroke Law Limited is ordered to pay \$5,250 to Rabah Bashir as a contribution towards his legal costs.**

Employment relationship problem

[1] The Authority in its substantive determination dated 7 March 2015 held that Mr Bashir was unjustifiably disadvantaged by racial harassment and bullying and ordered the respondent pay compensation of \$7,500 including a reduction for contributory behaviour.¹ The respondent was also successful in its counterclaim and Mr Bashir was ordered to pay damages of \$1,322.22 to Ladbroke Law Limited.

[2] The applicant seeks costs of \$7,500 and disbursements of \$91.56. The respondent submits that costs should lie where they fall.

¹ [2016] NZERA Auckland 73.

Costs and self-represented litigant lawyers

[3] The usual rule is that a successful self-represented litigant is entitled to recover disbursements but not costs. There is an exception to the rule in the case of a litigant who is a practising lawyer. Such a litigant can be awarded both costs and disbursements.²

[4] Mr Bashir represented himself and is a practising lawyer. Although Mr Bashir acted for himself in a personal capacity, that did not prevent an award of costs. The Courts have continued to approve the making of costs awards in criminal and civil proceedings involving litigants who are practising solicitors acting in their personal capacity.³

[5] Mr Bashir was successful in his personal grievance application and is entitled to seek costs. There are no factors justifying a reversal in costs in favour of the respondent.

What is the starting point for awarding costs?

[6] The starting point for awarding costs is the Authority's daily notional tariff. The current daily notional tariff is \$3,500 per day. Accordingly, the starting point for awarding costs is \$7,000, given this matter took two days' hearing time.

Are there any factors increasing or reducing costs?

Mediation Costs

[7] Mr Bashir seeks increased costs for attending mediation on the basis the respondent did not settle this matter. No itemised account of the quantum of costs attributable to attending mediation has been provided. Other than the failure to settle the matter, no other conduct by the respondent regarding mediation has been identified. This does not weigh in favour of any increased costs. There may have been several reasons affecting settlement which were not attributable to the respondent alone.

² *R v. Meyrick* [2008] NZCA 45 at [10].

³ *R v. Meyrick* [2008] NZCA 45 was a costs application by a qualified solicitor who did not hold a current practising certificate following the successful appeal of a criminal conviction. The Court of Appeal cited with approval *London Scottish Benefit Society v. Chorley* (1884) 13 QBD 872 (CA) as a possible precedent for the award of costs in both criminal and civil cases involving self-represented solicitors. However in this case the Court refused costs because the applicant was not a practising lawyer at the time of trial and appeal.

Reduction in costs

[8] The respondent seeks a reduction in any costs award because it was successful in its application to strike out and counterclaim and was required to undertake additional preparation for witnesses who did not appear at hearing.

[9] Witnesses that do not appear or come up to brief is not unexpected in litigation. Although preparation may have increased, hearing time decreases because issues are no longer being pursued and examination is limited to fewer witnesses. There is little in the reduced numbers of witnesses at hearing that requires any increase in costs.

[10] The successful strike out application occupied half of the first hearing day. The counterclaim occupied very little hearing time given the concessions by Mr Bashir. This justifies a reduction in costs by 25% to the daily notional tariff resulting in \$2,625 per hearing day, or \$5,250 in total.

[11] Ladbrook Law Limited is ordered to pay \$5,250 to Rabah Bashir as a contribution towards his legal costs.

TG Tetitaha
Member of the Employment Relations Authority