

BETWEEN BRIAN THOMAS DENHAM
 Applicant

AND ANTHONY GEORGE SELMES
 Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
 A Holgate, Counsel for the Respondent

Submissions received: 24 April 2014 from Respondent

Date of Determination: 6 June 2014

COSTS DETERMINATION OF THE AUTHORITY

A. The application for costs is dismissed. Parties are to meet their own costs.

[1] The Authority in its substantive determination dated 11 April 2014¹ found the applicant was not an employee. The application for personal grievance was dismissed.

[2] The respondent now seeks costs. His actual costs are unknown.

Issues

[3] The following issues are to be determined:

- (a) What is the starting point for assessing costs?
- (b) Are there any factors that warrant adjusting the notional daily tariff?

¹ [2014] NZERA Auckland 143

What is the starting point for assessing costs?

[4] The correct approach to assessing costs is for the Authority to adopt its usual notional daily tariff based approach to costs.² The current notional daily tariff is \$3,500. This matter involved a one day investigation meeting. The starting point for assessing costs would have been \$3,500.

[5] The respondent has failed to file copies of his actual legal costs incurred.

[6] The Authority required this information to assess whether his actual legal costs were reasonable and to determine starting point. If his actual legal costs were lower than the notional daily tariff, the starting point would be reduced accordingly.

[7] Parties were directed to file and serve memorandum by 25 April 2014 supporting an award of costs. This time has now elapsed. No further time to file evidence shall be given. The evidential basis required to support an order for costs, namely the respondent's invoices, has not been filed.

Are there any factors that warrant adjusting the notional daily tariff?

Factors which warrant an increase to the notional daily tariff

[8] There are no factors which warrant an increase in the notional daily tariff.

Factors which warrant a reduction in the notional daily tariff

[9] There are no factors warranting any reduction in the notional daily tariff.

[10] In the circumstances, the failure to file invoices in support of an award of costs is fatal to this application. The application for costs is dismissed. Parties are to meet their own costs.

TG Tetitaha
Member of the Employment Relations Authority

² *Mattingly v Strata Title Management Ltd* [2014] NZEMPC 15 at [16]