

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 306
5437389

BETWEEN MICHAEL MOHI LYTTLE
Applicant

A N D RYH CONTRACTING
LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Mark Nutsford, Advocate for the Applicant
Rebecca Valda de Farias, Counsel for the Respondent

Submissions Received: 25 June 2014 from the Applicant
2 July 2014 from the Respondent

Date of Determination: 15 July 2014

COSTS DETERMINATION OF THE AUTHORITY

- A. RYH Contracting Limited is ordered to pay Mr Lyttle \$3,500 towards his legal costs plus \$71.56 to reimburse his filing fee.**

Employment relationship problem

[1] Mr Lyttle succeeded in his unjustified dismissal claim in the Authority's determination of 17 June 2014¹. The Authority encouraged the parties to resolve costs by agreement. That has not occurred so Mr Lyttle now seeks a costs order in his favour. He has incurred total costs and disbursements of \$9,243.85.

Relevant law

[2] The law relating to costs in the Authority is so well settled I do not need to set out the key widely recognised principles. Costs are discretionary with the discretion to be exercised on a principled basis.

¹ [2014] NZERA Auckland 241.

[3] Mr Nutsford on behalf of Mr Lyttle submits that the notional daily tariff “*be overridden by an assessment of costs in real dollar terms*”.

[4] I do not accept that it is appropriate to depart from the Authority’s usual notional daily tariff based approach to costs in this case. It is not uncommon for parties to incur legal costs in excess of the Authority’s notional daily tariff. The tariff is widely known and it is one of the factors which parties should take into account when deciding to proceed to an investigation meeting.

[5] In terms of the notional daily tariff approach this matter involved a one day investigation so the starting point for assessing costs is \$3,500. I must now consider on a principled basis whether there are any factors which warrant an adjustment to the notional daily tariff.

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

[6] Ms Valda de Farias submits that the notional daily tariff should be reduced to \$2,000. I do not accept that there is any good or appropriate reason for that to occur.

[7] Ms Valda de Farias submits that the fact that RYH Contracting Limited (RYH Contracting) incurred the costs of three employees attending the investigation meeting and the associated loss of productive time and therefore turnover is a factor which should be reflected in costs. I do not accept that submission.

[8] The situation described is not unusual for those attending an investigation meeting. I consider it is a factor parties should consider when involved in Authority proceedings but it is not a factor which should result in adjustments being made to the notional daily tariff.

[9] I am not persuaded by the parties’ submissions that it is appropriate for any adjustments to be made to the Authority’s notional daily tariff. I am also not aware of any matters which would make it appropriate to adjust the notional daily tariff. I therefore adopt the current tariff.

Outcome

[10] RHY Contracting is ordered to pay Mr Lyttle \$3,500 towards his actual costs together with \$71.56 to reimburse his filing fee.

Disbursements

[11] Although Mr Nutsford's did not specifically make a claim to recover disbursements for Mr Lyttle he filed an invoice which had disbursements recorded on it. I consider that approach is insufficient to support an award to reimbursement being made. It is not up to the Authority to pick its way through invoices which a representative has rendered to a party in order to attempt to identify what disbursements a party may wish to claim for.

[12] It is up to a party seeking to recover disbursements to specifically claim for them. They are also expected to provide information or evidence in support of such a claim (such as an invoice) together with an explanation of why the disbursement was incurred and why it should be recoverable.

[13] No such information was provided and no specific claim for reimbursement of disbursements was made so I make no order regarding disbursements.

Rachel Larmer
Member of the Employment Relations Authority