

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 197
5328688

BETWEEN

ELAINE MANDER
Applicant

AND

IHC NEW ZEALAND
INCORPORATED
Respondent

Member of Authority: P R Stapp
Submissions Received by: 3 April 2013
Date of Determination: 15 May 2013

COSTS DETERMINATION OF THE AUTHORITY

The reserved matter of costs

[1] IHC has requested that Ms Mander be required to pay a contribution of \$2,000 towards its costs of \$4,556 for attending to her reopening of the Authority's investigation.

[2] Ms Mander has made a succinct reply to IHC's application for costs:

Are you seriously telling me that because I received an unfair hearing and asked for it to be fairly which it was not, that IHC get to add insult to injury by being awarded more costs for objecting to my request for natural justice?

[3] IHC was successful in opposing the application for the reopening application filed by Ms Mander.

[4] The application for costs could not have come as a surprise to Ms Mander. This is because in the substantive submissions made by the IHC at paragraphs [43]-

[46] it referred to a *Calderbank* offer in relation to the proceedings that had been made, and it was submitted by IHC's representative that this equally applies in the reopening investigation of the same matter detailed in the previous costs decision of the Authority in [2012] NZERA Auckland 460. The respondent was successful and as such, costs follow the event in the usual way.

[5] The points I would make in regard to Ms Mander's submissions are as follows. First her application was misguided because if she believed that there had been an injustice because the Authority member got the decision wrong then the matter should have been challenged. Second the IHC clearly pointed out that Ms Mander should have reasonably considered the risks that were involved in her application. Third by pursuing her application Ms Mander has put the IHC to additional costs that could have been avoided. This is not a penalty on her, but partial reimbursement of IHC's avoidable costs.

[6] I must therefore weigh the above and consider an appropriate award that must come within the range for the daily tariff applied by the Authority (\$3,500) and the claim for \$2,000. As a matter of principle costs follow the event. In this regard there was no need for an investigation meeting. The matter was dealt with on the papers. There was nothing novel and or new about the application. I assess the appropriate amount for costs at half the notional daily tariff.

[7] I order Ms Mander to pay IHC New Zealand Incorporated \$1,750 costs. It is left open to the parties to arrange instalments for payment.

P R Stapp
Member of the Employment Relations Authority