

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 232  
5403129

BETWEEN COLLEEN MATTINGLY  
Applicant  
A N D STRADA TITLE  
ADMINISTRATION LIMITED  
Respondent

Member of Authority: Rachel Larmer  
Representatives: Tim Oldfield, Counsel for Applicant  
Gemma Mayes, Counsel for Respondent  
Submissions Received: 22 April 2013 from Respondent  
15 May 2013 from Applicant  
29 May 2013 from Respondent  
Date of Determination: 07 June 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. Strada Title Administration Limited is order to pay Mrs Colleen Mattingly:**

- a \$3,200 towards her legal costs; and**
- b \$71.56 to reimburse her filing fee.**

**Employment relationship problem**

[1] In a substantive determination dated 01 May 2013 the Authority concluded that Strada Title Administration Limited had unjustifiably dismissed Mrs Mattingly.<sup>1</sup>

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<sup>1</sup> [2013] NZERA Auckland 158.

[2] The parties were encouraged to resolve costs by agreement but failing that a timetable was set for costs to be dealt with by an exchange of memoranda. Costs have not been agreed. Mrs Mattingly seeks an award of indemnity costs of \$6,361.50 excluding GST together with reimbursement of her filing fee.

### **Issues**

[3] The following issues are to be determined:

- (1) Are indemnity costs appropriate?
- (2) If not, what costs should be awarded?

### **Are indemnity costs appropriate?**

[4] An award of indemnity costs is exceptional and requires exceptionally bad behaviour by a party. This is not one of those situations.

[5] Mrs Mattingly did not rely on any of the grounds identified by the Court of Appeal in *Bradbury v. Westpac Banking Corporation Ltd*<sup>2</sup> as examples of situations in which indemnity costs may be appropriate. Even if she had done so I find that no such grounds exist in respect of this matter.

[6] I consider this is a matter to which the Authority should adopt its normal notional daily tariff based approach to costs.

### **What costs should be awarded?**

*What is the starting point for assessing costs?*

[7] The principles relating to costs in the Authority are so well established I do not need to set them out. The current notional daily tariff is \$3,500 which may be adjusted on a principled basis to reflect the particular circumstances of each case.

[8] The Authority's investigation meeting did not take a full day<sup>3</sup> so the appropriate starting point for assessing costs is \$2,000 being pro rata the notional daily tariff to reflect the time spent at the investigation meeting. I therefore adopt \$2,000 as the notional starting tariff in this case.

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<sup>2</sup> [2009] NZCA 234.

<sup>3</sup> It commenced at 9.30am and concluded at 2.00pm, including a lunch adjournment

*Are there any factors that warrant a reduction in the notional daily tariff?*

[9] Although Mrs Mattingly as the overall successful party is entitled to costs, she was not entirely successful in respect of all of the claims made in her Statement of Problem.

[10] Mrs Mattingly succeeded on her unjustified dismissal and breach of good faith claims. However, she withdrew her age discrimination claim at the beginning of the Authority's investigation meeting and she withdrew her disability discrimination claim during the investigation meeting after telling the Authority she did not have a disability. Mrs Mattingly was also unsuccessful in claiming a penalty for the breach of good faith.

[11] I accept the respondent was put to unnecessary costs because it addressed the discrimination claims and the unsuccessful penalty claim. I consider that a reduction to the notional starting tariff of \$300 is appropriate to reflect that.

*Are there any factors which warrant an increase to the notional daily tariff?*

[12] Mrs Mattingly seeks "*preparation time*" but I decline to increase the starting tariff on that basis because it is not the Authority's usual practice to do so. This was a straightforward matter in which the respondent admitted procedural defects had occurred in the manner it dealt with Mrs Mattingly. There were no complex legal or factual issues that needed to be addressed.

[13] Mrs Mattingly submits the starting tariff should be increased because she was required to provide additional information prior to the investigation meeting. I do not accept that.

[14] As part of the Authority's investigation process it is usual for it to specifically ask for relevant information to be provided before the investigation meeting if the parties have not already provided all relevant information. It is preferable for parties to ensure all relevant information is provided to the Authority from the outset so it is not appropriate to increase costs for a party who has not done so.

[15] Mrs Mattingly submits the notional daily tariff should be increased to reflect the respondent's rejection of a reasonable settlement offer.

[16] The settlement offer was made on 31 January 2013 after mediation but before the Authority set down the investigation meeting which was held on 11 April 2013. Mrs Mattingly offered on a without prejudice except as to costs basis to accept less than she received from the Authority's determination of her claims.

[17] This is a factor which should result in the notional daily tariff being increased by \$1,500. If the respondent had accepted Mrs Mattingly's reasonable settlement offer then both parties would have avoided the additional expense of preparing evidence and submissions for the Authority's investigation.

### **Outcome**

[18] Strada Title Administration Limited is ordered to pay Mrs Mattingly \$3,200 towards her legal costs together with \$71.56 to reimburse her filing fee.

**Rachel Larmer**  
**Member of the Employment Relations Authority**