

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI Ā TARA ROHE**

[2023] NZERA 496  
3205979

BETWEEN

ANNA MCLOUGHLIN  
Applicant

AND

BROOKLYN EDWARDS  
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Lars Hansen, counsel for the Applicant

Submissions received: 7 July 2023 from Applicant

Determination: 4 September 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In its substantive determination of 28 June 2023, the Authority issued a determination ordering Brooklyn Edwards to comply with the s149 settlement agreement between the parties and to pay a penalty.<sup>1</sup> The Authority reserved the issue of costs and set a timetable for exchange of submissions.

[2] The Authority received submissions from the Applicant and no information from the Respondent.

[3] The Applicant is in receipt of legal aid and total costs have amounted to \$1894.50. The Applicant is seeking legal aid disbursements inclusive of the filing fee of \$115.00 together with a modest uplift of the daily tariff. It is submitted the notional starting point would be equivalent to a quarter of a first day which equates to \$1,125.00.

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<sup>1</sup> *McLoughlin v Edwards* [2023] NZERA 341

[4] The Applicant was represented and the compliance order application was heard on the papers. The Applicant was the successful party and is therefore entitled to consideration of costs.

### **Discussion**

[5] Costs are a matter of discretion. The discretion is to be exercised in accordance with principle and not arbitrarily. The main principle in the exercise of the discretion is that costs follow the event.

[6] It was submitted the starting point based on the Authority's daily tariff should be a quarter of the daily tariff which amounts to \$1,125.00 with an uplift taking the award above \$1,500.00. This was submitted to be similar to other Authority costs awards involving non-compliance with s149 settlement agreements in circumstances where there had been a lack of engagement by the Respondent.

[7] In this case, it is apparent from the communications between the parties the lack of engagement has put the Applicant to a greater expense. It is also clear from the communications the Respondent is aware of the proceedings but is choosing not to participate.

### **Conclusion and orders**

[8] In these circumstances I consider an appropriate starting point to be \$1,125.00, representing a quarter of the first day. From there a modest uplift of \$575.00 is appropriate to recognise that the Respondent's conduct has unreasonably increased the costs of the Applicant taking the costs award to \$1,700.00.

[9] Brooklyn Edwards is ordered to pay Anna McLoughlin:

- (a) \$1,700.00 in costs.
- (b) Legal aid disbursement and a filing fee of \$115.00.

Sarah Kennedy-Martin  
Member of the Employment Relations Authority