



# New Zealand Employment Relations Authority Decisions

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## Nand v Idea Services Limited (Auckland) [2018] NZERA 204; [2018] NZERA Auckland 204 (27 June 2018)

Last Updated: 17 August 2018

### IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 204  
5445442

BETWEEN DAYA NAND Applicant

A N D IDEA SERVICES LIMITED Respondent

Member of Authority: James Crichton

Representatives: No appearance for Applicant

Paul McBride, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: No submissions from Applicant

30 May 2018 from Respondent

Date of Determination: 27 June 2018

### COSTS DETERMINATION OF THE AUTHORITY

#### The substantive determination

[1] In my substantive determination issued as NZERA Auckland 157 on 11 May 2018, I reserved costs.

[2] The respondent (Idea) has been completely successful in resisting all of Mr Nand's claims and it seeks costs.

#### Claim for costs

[3] Idea seeks costs "in the round" of \$5,500 to \$6,000.

[4] Those costs relate to the totality of the proceedings between these parties. The matter has had a long history. The employment relationship between the parties came to an end in June 2013. A claim in the Authority was filed promptly after the end of

the employment but the matter was then adjourned pending the disposal of criminal charges against Mr Nand.

[5] Some years later, Mr Nand determined to proceed with his matter again using a different representative and an amended statement of problem was filed and served. Idea objected to that amended statement of problem and I then issued a determination disposing of much but not all of the proceeding that was then on foot.

[6] I directed that there be a brief investigation meeting to explore whether the remaining claim still on foot was made out, and in the result after brief investigation I determined that that claim also failed.

[7] So, put shortly, this is not a straightforward personal grievance where application of the daily tariff without more, will meet the case. Undoubtedly, the daily tariff remains the starting point for any consideration of the appropriate quantum of costs but there are other factors in play here as well which will influence the final outcome.

[8] Of those other factors, the first and most obvious one based on the brief recital of the proceedings to date is that there have been a number of attendances by counsel for Idea to deal with the various aspects of Mr Nand's various claims and I am satisfied that Idea is entitled to have all of those matters properly considered in the costs setting.

[9] This is so partly because Idea is a charity and partly because I accept Idea's submission that there is a sense in which some anyway of Mr Nand's claims had proceeded on a basis which would appear to be fatally flawed.

[10] Moreover, counsel for Idea refer me to a recent decision of the Employment Court in *Performance Leaders All Property Services Wellington Limited v Chinan* [2018] NZEmpC 45 where the Employment Court found that when issues of jurisdiction are raised and there is detailed argument, an uplift of the daily tariff can be appropriate.

### **The response**

[11] There has been no response at all from Mr Nand's current representative. I

hasten to be clear that that reflects not at all on Mr Nand's most recent representative

who was most helpful during my investigation meeting; the position is simply that Mr Nand's current representative has not been able to obtain instructions from Mr Nand on the matter of costs and is therefore not able to assist me in considering this matter.

### **Determination**

[12] As I have already indicated, the start point for the consideration of costs in the

Authority ought to be the daily tariff. The current tariff for a day's investigation is

\$4,500 for the first day. This matter has involved counsel for Idea in attendances on a number of occasions since 2013.

[13] Since the file has been on my list, I have issued two determinations both of which have necessitated counsel preparing thorough and helpful submissions and in addition there has been a half day investigation meeting which counsel attended and assisted me further.

[14] In addition, there were earlier engagements involving counsel when the matter first came before the Authority which also need to be factored into the matter of costs.

[15] A half day investigation meeting would attract a costs impost under the current rules of \$2,250 and to that starting point I apply an uplift of a like figure to take account of the earlier ordinary attendances bringing the subtotal to \$4,500. To that figure I apply a further \$1,500 to reflect the submissions on jurisdiction that counsel for Idea had to make in defending his client against Mr Nand's most recent set of claims.

[16] Accordingly, I direct that Mr Nand is to pay to Idea Services Limited the sum of \$6,000 as a contribution to their costs in resisting his various claims following on from the termination of the employment relationship between those parties in June of

2013.

**James Crichton**

**Chief of the Employment Relations Authority**