

**NOTE: This determination contains an order prohibiting publication of certain information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 267  
3156201

BETWEEN OJI  
Applicant  
AND MURRAY BOYD  
Respondent

Member of Authority: Lucia Vincent  
Representatives: Ashleigh Fechny, advocate for the Applicant  
Murray Boyd in person  
Investigation Meeting: On the papers  
Submissions Received: 5 April 2023 from the Applicant  
20 April from the Respondent  
Date of Determination: 25 May 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] The Authority determined on 22 March 2023 that OJI had been successful in her personal grievance for sexual harassment and unjustified (constructive) dismissal against Murray Boyd.<sup>1</sup> The Authority awarded remedies accordingly.

[2] Costs were reserved and the parties were encouraged the issue of costs between themselves. They have been unable to do so. OJI lodged and served a memorandum on costs. Mr Boyd lodged his response.

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<sup>1</sup> *OJI v Boyd* [2023] NZERA 144

[3] The Authority's substantive determination included a permanent non-publication order to suppress OJI's name, medical information and any details identifying her. This non-publication order remains in place.

### **Cost principles**

[4] Clause 15 of Schedule 2 of the Employment Relations Act 2000 gives the Authority discretion to order any party to a matter to pay to another party such costs and expenses as the Authority thinks reasonable.

[5] If unsuccessful, a party will usually have to contribute to the costs of the successful party, as well as meeting their own costs.

[6] The daily tariff applied by the Authority sets the starting point from which relevant factors and principles may guide an upward or downward adjustment of the amount of costs awarded. Practice Note 2 for the Authority sets the current tariff for costs at \$4,500 for the first day of any matter.<sup>2</sup>

[7] The Employment Court has endorsed the average daily tariff approach of the Authority and relevant principles governing costs in the Authority.<sup>3</sup> These include considering whether the conduct of the parties increased costs unnecessarily (warranting an adjustment up or down), without compromising the Authority's otherwise modest approach to costs.<sup>4</sup>

### **Costs application**

[8] I am satisfied OJI was the successful party in this matter and therefore entitled to costs. She succeeded in her personal grievances - the primary focus of the investigation meeting that lasted one and a half days. Although OJI did not succeed on an issue relating to breaks, the time spent addressing this issue including during the investigation meeting was minimal (and notably absent from both parties legal submissions). I am satisfied in the exercise of my discretion that the award of costs in this matter appropriately reflects the degree of OJI's success.

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<sup>2</sup> See: <https://www.era.govt.nz/assets/Uploads/practice-note-2.pdf>.

<sup>3</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [43-47] and *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135 at [108].

<sup>4</sup> *PBO*, above n 3, at [43-47].

[9] Mr Boyd's submissions on costs cover what appears to be his disagreement with the substantive determination. They do not directly address whether and how costs should be awarded.

[10] OJI received a grant of legal aid from the Legal Services Agency (Agency). The Agency has confirmed costs incurred as of 4 April 2023 for OJI were \$4,149.80 (gross). OJI has sought reimbursement of further costs totalling \$350 plus GST based on the fixed fee framework for Civil (Employment) Fixed Fees Schedule for the Authority from the Agency. I am satisfied if these have not already been incurred, they will be. OJI has therefore sought a total of \$4,552.30 (gross) in costs.

[11] In addition to costs, OJI has incurred a disbursement totalling \$71.56 for the filing fee. She has also been invoiced for a hearing fee for a second half hearing day of \$153.33.

[12] OJI has not sought the full daily tariff because her total costs are less than the tariff that would otherwise apply for a one-and-a-half day hearing with written submissions following. In the normal course of events, I would consider a starting point of an amount representing costs for approximately one and a half days being \$6,250.

[13] I do not consider it appropriate to award OJI more costs than actually incurred. I accept OJI has or will incur costs of \$4,552.30 (gross). This amount represents a reasonable level of costs consistent with the modest approach to costs appropriate in the Authority. I would not normally effectively award indemnity costs. However given costs are less than what would normally have been awarded, I consider it an appropriate exercise my discretion to award the costs sought plus disbursements.

### **Conclusion on Costs**

[14] OJI has succeeded in her application for costs.

[15] I order Mr Boyd to pay OJI the following costs and disbursements:

- (a) Costs of \$4,552.30 (gross);
- (b) Disbursements being:
  - (i) Filing fee of \$71.56; and

- (ii) Half-day hearing fee invoiced for \$153.33.

Lucia Vincent  
Member of the Employment Relations Authority