

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 385
3042014

BETWEEN APOSTLE RADEV
 Applicant

AND MG FOODS LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Mike Harrison, Advocate for the Applicant
 Joseph Harrop, Counsel for the Respondent

Investigation Meeting: On the papers

Submissions: 20 June 2019 from Applicant
 27 June 2019 from Respondent

Date of Determination: 01 July 2019

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Radev, as the successful party, seeks an award of indemnity costs of \$7,590 or alternatively an award of \$4,500 in his favour.

[2] MG Foods Limited (MG Foods) says that 0.25, being \$1,125, of the \$4,500 notional daily tariff would be an appropriate basis for determining costs in this matter.

[3] MG Foods also made the contradictory submission that while it was not seeking costs, it should be awarded 0.5 (\$2,250) of the daily tariff of \$4,500 for the costs it incurred in responding to a constructive dismissal claim that was filed out of time.

[4] MG Foods is not entitled to costs. There was no need for it to have incurred costs in connection with the constructive dismissal claim which was out of time. That is also not a factor that should reduce the notional daily tariff. As the unsuccessful party it is required to contribute towards Mr Radev's costs because he was the successful party.

[5] There are no grounds on which to award indemnity costs. It is also more appropriate for the Authority to apply its usual notional daily tariff based approach to assessing costs.

[6] This matter involved two determinations, the first establishing liability and the second imposing a penalty on MG Foods. It should therefore be treated as if it involved one day of investigation meeting time, for the purposes of assessing costs.

[7] The current notional daily tariff for the first day of an investigation meeting is \$4,500. The notional starting tariff for assessing costs in this matter is therefore \$4,500.

[8] There are no factors that warrant this notional starting tariff being reduced.

[9] The only factor that should result in the notional starting tariff being increased is MG Foods spurious confidentiality claim, that had to be resolved by another Member. By making such a claim MG Foods unnecessarily increased Mr Radev's actual costs, because he incurred expense in responding to it.

[10] The notional starting tariff should be increased by \$500 to reflect MG Foods' conduct that unnecessarily increased Mr Radev's costs.

[11] MG Foods is ordered, within 28 days of the date of this determination, to pay Mr Radev \$5,000 towards his actual legal cost plus \$71.56 to reimburse him for his filing fee.

Rachel Larmer
Member of the Employment Relations Authority