

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2022] NZERA 568  
3165221

BETWEEN IAN RIDDLER  
Applicant  
AND MERIDIAN ENERGY LIMITED  
Respondent

Member of Authority: Peter van Keulen  
Representatives: Mary Hubble, counsel for the Applicant  
Kylie Dunn, counsel for the Respondent  
Investigation Meeting: On the papers  
Submissions Received: 17 October 2022 from the Applicant  
4 October 2022 from the Respondent  
Date of Determination: 2 November 2022

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1] In a determination dated 20 September 2022, I found that the Authority did not have jurisdiction to determine Ian Riddler's claim against Meridian Energy Limited and I

dismissed Mr Riddler's claim.<sup>1</sup> I also reserved costs so that the parties could try to agree costs. The parties were unable to agree and now Meridian seeks costs.

### **Application for costs**

[2] Counsel for Meridian seeks an award of costs of \$3,000.00. Counsel says I should award costs to Meridian as it was successful in its application to dismiss Mr Riddler's claim. Counsel says that whilst this matter was determined on the papers, I should assess quantum by applying the equivalent of one half day of the daily tariff to the application.<sup>2</sup> And that I should add an uplift as Mr Riddler's claim was without merit.

[3] Counsel for Mr Riddler says that his claim was essentially a test case clarifying the jurisdiction conferred on the Authority under the "Triangular Employment" amendments to the Employment Relations Act 2000.<sup>3</sup> Counsel also says Mr Riddler's claim was not without merit, as alleged by Meridian and remains of the view that the amended provisions do provide jurisdiction for Mr Riddler's claim, such that a challenge has now been lodged in the Employment Court. Counsel submits that costs should lie where they fall, i.e., each party bears its own costs.

### **Analysis**

#### *Costs in the Authority*

[4] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined on the Authority's website.<sup>4</sup>

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<sup>1</sup> *Ian Riddler v Meridian Energy Limited* [2022] NZERA 474.

<sup>2</sup> The normal practice of the Authority when setting costs, is to apply a set amount for each day of the investigation meeting for the matter- essentially calculating quantum based on the time spent in the investigation meeting. This is applying the daily tariff.

<sup>3</sup> The Employment Relations (Triangular Amendment) Act 2018.

<sup>4</sup> For further information about the factors considered in assessing costs, see:

[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).

### *Costs for Meridian*

[5] The starting point is that costs should follow the event, so as Meridian was successful with its application it is entitled to an award of cost.

[6] This presumption can be displaced in certain circumstances, including where a claim is of a kind that it is a “test case”.

[7] I have considered the question of whether Mr Riddler’s claim was a test case and am not persuaded that it is. Mr Riddler’s claim does not have the wide effect beyond the parties that would be indicative of a test case. It does not have application to a wider or larger group of employees as might be the case with interpretation of a collective agreement nor does it touch on legislative obligations imposed on employers of the scope required, such as was the case with the application of trial period provisions.<sup>5</sup> I believe the case, whilst instructive on the issue of jurisdiction when seeking to join a controlling third party when there is no underlying claim against an employer, is very narrow in its application and the circumstances would seem unlikely to be replicated.

[8] So, I am not persuaded that costs should lie where they fall and Meridian is entitled to an award of costs.

### *Applying the daily tariff*

[9] The next question is whether I should apply the daily tariff to Meridian’s application as it was done without an investigation meeting i.e., on the papers. I accept this is the right approach but consider one half day to be too high. On reviewing the work involved I am prepared to award costs on the basis of one third of one day, so \$1,500.00.

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<sup>5</sup> *National Union of Public Employees (Inc) v Assure New Zealand Ltd*, Unreported 2005, BC200569003; and *Smith v Stokes Valley Pharmacy (2009) Ltd* [2010] NZEmpC 111.

### *Increasing the daily tariff*

[10] The last point for me to consider is whether the tariff as applied should be increased to reflect that Mr Riddler's claim was without merit. Whilst Mr Riddler's claim was dismissed as I found the Authority did not have jurisdiction, I do not accept it was the kind of frivolous or unmeritorious claim that should attract an increase in costs. I will not increase the daily tariff.

### *Conclusion*

[11] As set out above, the daily tariff is currently \$4,500.00 for the first day of the investigation meeting and this matter should be based on one third of one day of an investigation meeting, which is \$1,500.00.

### **Order**

[12] Ian Riddler is to pay Meridian Energy Ltd \$1,500.00 as a contribution to its costs in this matter; this should be paid within 14 days of the date of this determination.

Peter van Keulen  
Member of the Employment Relations Authority