

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 20A/09
5117674**

BETWEEN FIONA ROSS-TAYLOR
 Applicants

AND THE CHIEF OF DEFENCE FORCE
 Respondent

Member of Authority: Leon Robinson

Submissions Received: 9 February 2009
 24 February 2009

Determination: 2 April 2009

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] By a Determination dated 21 January 2009, the Authority made formal orders in settlement of the employment relationship problem between these parties.

[2] The applicant Dr Fiona Ross-Taylor ("Dr Ross-Taylor") now seeks costs from the Chief of Defence Force. The Authority is advised by responsible counsel that Dr Ross-Taylor's costs of professional representation are in the order of \$49,146.50 exclusive of GST and disbursements. Dr Ross-Taylor claims disbursements of \$470.00. Counsel submits the investigation should be regarded as a six day investigation and a contribution to costs in the sum of \$30,000.00 together with GST is sought plus disbursements.

[3] The Chief of Defence Force says in reply that it is appropriate to calculate costs on the basis of three days. Counsel submits that the applicant's claim for costs is excessive and not in accord with principle. It is further submitted that the matters involved were not complex or difficult. It is submitted that the Authority should adopt its tariff approach and an award on this basis in the amount of \$9,000.00 is appropriate.

[4] This is an equity and good conscience jurisdiction and costs awards in the Authority are generally modest consistent with the Authority's approach to its investigations. The exercise of my discretion calls for a determination of what is a fair and reasonable contribution as between the parties.

[5] This investigation proceeded over two days. I agree that factoring in telephone conferences and the preparation of submissions, the investigation is to be regarded as proceeding over three days. The applicant was wholly successful in obtaining the resolution sought by her.

[6] I am persuaded to approach this application on a tariff basis. I am also persuaded that there ought to be an uplift in the daily tariff to reflect particular matters. I note that I had to direct the parties to attend mediation because the Chief of Defence Force had not been prepared to do so informally at any time previously. That ill-advised reluctance invited the costs now sought. I therefore allow a daily tariff of \$4,000.00 over three investigation days in the total sum of \$12,000.00.

[7] Accordingly, exercising my discretion on a principled basis and for the reasons outlined above, **I order the Chief of Defence Force to pay to Dr Susan Ross-Taylor the sum of \$12,000.00 as costs.**

Leon Robinson
Member of Employment Relations Authority