

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 296
5427787

BETWEEN GURMEETA SINGH
 Applicant

A N D COUNSELLING SERVICES
 CENTRE
 Respondent

Member of Authority: T G Tetitaha

Representatives: A Singh, Counsel for the Applicant
 M Dearing, Counsel for Respondent

Investigation Meeting: On the papers

Submissions: 11 June 2014 from Applicant
 4 July 2014 from Respondent

Date of Determination: 11 July 2014

COSTS DETERMINATION OF THE AUTHORITY

A. The applicant for costs is dismissed.

Employment relationship problem

[1] The Authority in its substantive determination dated 9 May 2014 held that the applicant was unjustifiably dismissed on the grounds of redundancy.¹ The respondent was ordered to pay lost remuneration equivalent to two weeks' gross wages pursuant to ss.123 and 128 of the Employment Relations Act 2000 (the Act).

[2] The applicant now applies for indemnity costs.

[3] The Authority Member dealing with this matter has retired. The Chief of the Authority has required me to investigate and determine this application for costs pursuant to s.166A of the Act.

¹ [2014] NZERA Auckland 179

Issues

[4] The following issues are to be determined:

- a. Should the applicant be awarded indemnity costs?
- b. If not, what is the starting point for assessing costs?
- c. Are there any factors that warrant adjusting the notional daily tariff?

Should the applicant be awarded indemnity costs?

[5] Although the applicant seeks indemnity costs, the submissions do not address the legal and factual basis for this award. At best she refers to offers to settle costs for \$2,000. This is not a matter for indemnity costs and is in excess of the starting point below.

[6] Indemnity costs are exceptional so require “*exceptionally bad behaviour*” or may be awarded where a party has behaved either badly or very unreasonably.²

[7] From a perusal of the file and determination, this matter does not appear to meet the very high threshold required before indemnity costs may be imposed. I also do not have the applicant’s actual legal costs. This is addressed further below.

What is the starting point for assessing costs?

[8] The correct approach to assessing costs in this matter is for the Authority to adopt its usual notional daily tariff based approach to costs³. The current notional daily tariff is \$3,500. This matter involved a half day investigation meeting. The starting point for assessing costs is therefore \$1,750.

[9] The parties were directed to file their costs submissions within 28 days from the date of the determination. No further time for filing evidence shall be given.

[10] The applicant has not filed copies of her legal invoices or indicated what her actual legal costs were.

² *Bradbury & Ors v. Westpac Banking Corporation* [2009] NZCA 234

³ *Mattingly v Strata Title Management Ltd* [2014] NZEmpC 15 at [16]

[11] The basis for awarding costs in the Authority is a reasonable contribution to costs reasonably incurred. The Authority must always make assessments, first, of what costs were actually incurred; second, the reasonableness of them in all the circumstances; and finally, what should be a reasonable contribution to those costs reasonably incurred, again in all the circumstances of the parties and the case⁴.

[12] The lack of evidence about the applicant's actual costs incurred has left me in the position of being unable to properly assess costs in the manner set out above.

[13] Accordingly, the application fails for lack of an evidential basis for assessing costs. Given this determination, there is no need to consider the third issue. The application for costs is dismissed.

TG Tetitaha
Member of the Employment Relations Authority

⁴ *Eastern Bay Independent Industrial Workers' Union Inc v Pedersen Industries Ltd (No 2)*
EmpC Auckland AC11B/09, 10 June 2009