

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 200
5429937

BETWEEN NAPOLEONE TAMALEAOA
Applicant

A N D A1 ONEHUNGA TOWING
SERVICES LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: T Toilolo, Advocate for Applicant
I M Davidson, Advocate for Respondent

Submissions Received: 10 March 2014 from Applicant
3 March 2014 from Respondent

Date of Determination: 21 May 2014

COSTS DETERMINATION OF THE AUTHORITY

A. Napoleone Tamaleaoa is ordered to pay A1 Onehunga Towing Services Limited \$1,000 towards its actual legal costs by way of instalments of \$25 per week starting 20 June 2014.

Employment relationship problem

[1] The Authority in its substantive determination dated 3 March 2014¹ held that the applicant was justifiably dismissed and the counterclaim failed. The application for personal grievance and respondent's counterclaim were dismissed.

[2] The respondent now applies for costs. His actual costs were \$1,345.00 (GST inclusive).

[3] The applicant sought delay in determining this costs application until a rehearing had occurred. A determination about the application for stay and reopening

¹ [2014] NZERA Auckland 76

the hearing has been made by another member². The application for reopen was dismissed. Therefore the Authority shall proceed to determine the costs application before it.

Issues

[4] The following issues are to be determined:

- a. What is the starting point for assessing costs?
- b. Are there any factors that warrant adjusting the notional daily tariff?

What is the starting point for assessing costs?

[5] The correct approach to assessing costs in this matter is for the Authority to adopt its usual notional daily tariff based approach to costs.³ 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.

Are there any factors that warrant adjusting the notional daily tariff?

Factors which warrant a reduction in the notional daily tariff

[6] The respondent's actual costs are less than the starting point. This is not a matter that meets the high threshold required for indemnity costs to be imposed. The starting point for costs shall be the respondent's actual costs less one-third, totalling \$896.66. The respondents were also unsuccessful in their counterclaim. A further reduction of \$200 is appropriate because preparation and hearing of the counterclaim required less time than the personal grievance.

[7] The applicant's submissions deal with the merits of his case. That has already been determined in the substantive determination. That is not relevant to the issue of costs.

[8] There are no other factors that warrant a reduction in the notional daily tariff.

² [2014] NZERA Auckland 168

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

Factors which warrant an increase to the notional daily tariff

[9] The applicant's unsuccessful reopening application is a factor that warrants an increase in the notional daily tariff from the starting point for assessing costs. An increase to \$1,000 is warranted in the circumstances.

[10] It is understood Mr Tamaleaoa is struggling to find work.⁴ In the circumstances I exercise my discretion and direct payment by instalments of \$25 per week starting 20 June 2014.

Outcome

[11] Napoleone Tamaleaoa is ordered to pay A1 Onehunga Towing Services Limited \$1,000 towards its actual legal costs by way of instalments of \$25 per week starting 20 June 2014.

T J Tetitaha
Member of the Employment Relations Authority

⁴ Brief of evidence (unsworn) N Tamaleone para 55