

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 113
5408948

BETWEEN ANDREA THOMAS
 Applicant

AND TIC-TAC-TOE EDUCARE
 LIMITED
 Respondent

Member of Authority: K J Anderson

Representatives: David Vinnicombe, Advocate for Applicant
 Sandra Pope, Advocate for Respondent

Submissions received: 10 February 2014 from Applicant
 12 February 2014 from Respondent

Determination: 27 March 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 3 February 2014¹ the Authority found that the dismissal of Ms Thomas was unjustified and remedies were awarded. The parties were invited to resolve the issue of costs. The submissions for the parties indicate that Ms Thomas sought to have the costs she incurred addressed by Ms Pope; the owner and operator of Tic-Tac-Toe Educare Limited (Tic-Tac-Toe), but an agreement about this matter has not been possible.

[2] The submissions for Ms Thomas refer to the investigation meeting taking half a day and if the usual tariff based approach of the Authority is applied; an award of costs should be in the amount of \$1,750. In fact the hearing lasted approximately two hours, including some time whereby the parties engaged in some “without prejudice” discussions, to try and resolve the problem.

¹ [2014] NZERA Auckland 36

[3] The submissions for Tic-Tac-Toe propose that a payment of \$875.00 would reflect a reasonable contribution towards the costs incurred by Ms Thomas. Ms Pope also acknowledged that there was a contractual issue in regard to the time that Ms Thomas should have been employed for, and that matters could have been resolved had Ms Thomas adopted a more reasonable position in regard to her contractual entitlements.

Determination

[4] As I indicated to the parties at the investigation meeting, this matter could have easily been resolved without litigation before the Authority if a more realistic position had been adopted by Ms Thomas in regard to appropriate remedies, given that Ms Pope had acknowledged that she was at fault in regard to the fixed term of employment for Ms Thomas and was prepared to make monetary recompense accordingly.

[5] Given the overall circumstances, including those set out above and that the time occupied by the investigation meeting was of short duration; and the very small scale of a newly established business, I conclude that it is appropriate that any order for costs should be moderate.

[6] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, Tic-Tac-Toe Educare Limited is ordered to pay to Ms Thomas the sum of \$1,000.00 towards the costs incurred by her.

K J Anderson
Member of the Employment Relations Authority