

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 132
5646924

BETWEEN LUISA TOAISI
 Applicant

A N D FREE RANGE EGG AND
 POULTRY COMPANY LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Mark Nutsford, Advocate for Applicant
 Dave Jaques, Advocate for Respondent

Investigation Meeting: On the papers

Submissions Received: 13 March 2017 from Applicant
 14 April 2017 from Respondent
 18 April 2017 from Applicant

Date of Determination: 01 May 2017

**COSTS DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] Mrs Toaisi's unjustified dismissal personal grievance claim against her former employer the Free Range Egg and Poultry Company Limited (FRENZ) succeeded.

[2] Mrs Toaisi as the successful party seeks costs. I am satisfied that she has incurred legal costs in excess of the notional daily tariff.

[3] Costs principles in the Authority are so well established I do not see the need to set them out here. Suffice to say I adopt the Authority's usual notional daily tariff based approach to costs.

[4] This matter involved a two day investigation meeting. The notional starting point for assessing costs is \$8,000, being \$4,500 for the first day plus \$3,500 for the second day. I now need to consider the particular circumstances of this case to determine whether there are any factors that warrant the notional level of costs being adjusted.

[5] I do not consider there are any factors that warrant the notional daily tariff being reduced.

[6] Mr Nutsford says that costs should be increased because FRENZ did not have all of its witnesses available on the first day of the investigation meeting. I do not accept that argument because the matter required two days anyway, even if all of FRENZ's had attended on the first day.

[7] Mr Nutsford says costs should be increased because FRENZ's application on the second day of the Authority's investigation for the Authority to lay a perjury compliant with the NZ Police wasted over an hour of time. That meant oral submissions could not be presented on the last day of the investigation, requiring written submissions to be filed.

[8] I accept Mr Nutsford's submission. I find that FRENZ's perjury application was misconceived. It also resulted in at least an hour of investigation time being used to deal with FRENZ's unsuccessful application. I find that FRENZ's application unreasonably increased Mrs Toaisi's legal costs because it unnecessarily extended the investigation meeting.

[9] I consider that FRENZ's application was unnecessary and heavy handed. It was presented after Mrs Toaisi had drawn the issue to the Authority's attention at her own initiative and had produced documents to clarify her earlier evidence. I had also indicated that I accepted her evidence about the matters in issue.

[10] I find that FRENZ had no good reason for pressing on so aggressively with its application that the Authority make a formal complaint about Mrs Toaisi to the NZ Police. If FRENZ was so concerned to involve the police then it could and should have done so itself.

[11] I consider that the notional daily tariff be increased by \$500 to reflect the extra one hour of time that was required to comprehensively deal with FRENZ's unnecessary and inappropriate application.

[12] FRENZ is ordered to pay Mrs Toaisi \$8,500 towards her actual legal costs together with \$71.56 to reimburse her filing fee within 28 days of the date of this determination.

Rachel Larmer
Member of the Employment Relations Authority