

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 189  
5429177

BETWEEN

ROBYN VOSS  
Applicant

A N D

REGENT INTERNATIONAL  
EDUCATION GROUP  
LIMITED  
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person  
R Harrison and E McWatt, Counsel for Respondent

Investigation Meeting: On the papers

Submissions: 25 and 28 February 2014 from Applicant  
14 March 2014 from Respondent

Date of Determination: 14 May 2014

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A. Regent International Education Group Limited is ordered to pay Robyn Voss \$7,306.66 towards her actual legal costs.**

**Employment relationship problem**

[1] The Authority in its substantive determination dated 14 February 2014<sup>1</sup> held that applicant was unjustifiably dismissed. Regent International Education Group Limited was ordered to pay damages of \$2,500 to Ms Voss including a reduction due to contributory behaviour.

[2] Ms Voss seeks costs. Her actual legal costs were \$10,162.81.

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<sup>1</sup> [2014] ERNZ Auckland 53

## Issues

[3] 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?**

[4] The correct approach to assessing costs in this matter is for the Authority to adopt its usual notional daily tariff based approach to costs.<sup>2</sup> The current notional daily tariff is \$3,500. This matter involved a two day investigation meeting. The starting point for assessing costs is \$7,000.

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

#### *Factors which warrant a reduction in the notional daily tariff*

[5] The respondent submits the daily tariff is designed to compensate the costs of having a representative attend a hearing in person. The applicant was self-represented.

[6] The respondent was required to incur additional costs it would not normally incur, such as preparation of a bundle of documents. It prepared opening submissions but the applicant did not, despite being directed to do so by the Authority. It also submits the applicant had a *mixed result* referring to the finding that a fair and reasonable employer could have concluded Ms Voss' conduct was misconduct justifying dismissal. They also referred to the blameworthy conduct of the applicant requiring a reduction in remedies.

[7] The daily tariff is designed to contribute towards actual legal costs. It is not intended to cover all costs incurred. Legal representation at hearing is one part of the possible legal costs a litigant may incur. If a litigant chooses to be self-represented at hearing, this does not prevent recovery of legal costs incurred up to and hearing.

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<sup>2</sup> *Mattingly v Strata Title Management Ltd* [2014] NZEMPC 15 at [16]

[8] The preparation of the bundle of documents by a losing party simply prevents the applicant from claiming those costs at this stage. It is not conduct to reduce the amount of costs ordered. Any non-compliance by the applicant in filing opening submissions did not necessarily contribute to additional costs being incurred at hearing.

[9] The alleged mixed result cannot be a factor for costs. Ms Voss was successful in her application. Costs follow the event. She is entitled to seek a costs award.

[10] Her contributory conduct is not conduct relevant to reduction in costs. Costs are not to be used as a punishment or as an expression of disapproval of a party's conduct.<sup>3</sup> Contributory conduct was taken into account in reducing remedies. It cannot be taken into account to reduce costs as well.

*Factors warranting an increase in the daily notional tariff*

[11] There are no factors warranting any increase in the daily notional tariff. Ms Voss seeks reimbursement of her hearing costs of \$306.66. These appear reasonable.

**Outcome**

[12] Accordingly the Authority orders Regent International Educational Group Ltd to pay Robyn Voss the sum of \$7,306.66 towards her actual costs.

**TG Tetitaha**  
**Member of the Employment Relations Authority**

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<sup>3</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808, 819 at [44]