

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 199
5605927

BETWEEN ANTHONY WILCOCK AND
 ADALYNE WILCOCK
 Applicants

A N D AEROVIEW INVESTMENTS
 LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Sarah Sherwin Advocate for Applicants
 Fiona McMillan, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 08 June 2016 from Respondent
 17 June 2016 from Applicant

Date of Determination: 17 June 2016

**COSTS DETERMINATION OF THE EMPLOYMENT RELATIONS
AUTHORITY**

Employment Relationship Problem

[1] The respondent Aeroview Investments Limited (Aeroview) seeks costs against the applicants Mr Anthony and Ms Adalyn Wilcock. The applicants say Aeroview should not seek costs.

[2] The applicants filed a Statement of Problem alleging Aeroview had unjustifiably dismissed them, had unjustifiably disadvantaged them in their employment and had failed to provide notice of termination.

[3] Aeroview claimed that the Authority did not have jurisdiction over the applicants' claims because the applicants were independent contractors not employees, so the parties were never in an employment relationship.

[4] On 05 November 2015 Aeroview declined the applicants' request that it attend mediation. The applicants filed their Statement of Problem on 03 February 2016. Mediation occurred on 27 April 2016. Although mediation was unsuccessful, on 23 May 2016 the applicants withdrew their claims against Aeroview.

[5] Aeroview has incurred costs of \$6,325 (being \$1,725 for preparing the Statement in Reply and \$4,174.50 associated with mediation).

[6] Aeroview has applied to the Authority for an award of \$4,174.50 towards its costs.

[7] An award of costs is discretionary. Costs principles are so well established in the Authority that I do not need to set them out here.

[8] The Authority usually adopts a notional daily tariff based approach to costs which is based on \$3,500 per day which is pro-rataed if necessary. That notional starting point for costs is then adjusted (if appropriate) to reflect the particular circumstances of each particular case.

[9] This matter did not involve any Authority investigation time. The parties were not directed to mediation. The Authority's practice has been to not award mediation costs and I see no reason to depart from that in this particular case. I also do not consider it appropriate to set a new costs precedent by awarding costs to a party for merely filing a Statement in Reply.

[10] Accordingly, I find that Aeroview's costs application does not succeed.

Rachel Larmer
Member of the Employment Relations Authority