

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 270
5438431

BETWEEN

JAN ZELINKA
Applicant

A N D

PETER GILLING
FASTENERS (2004) LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: J Cairns, Advocate for Applicant
R Parmenter, Counsel for Respondent

Submissions Received: 11 June 2014 from the Applicant
20 June 2014 from the Respondent

Date of Determination: 30 June 2014

COSTS DETERMINATION OF THE AUTHORITY

A. The application for costs is dismissed.

Employment relationship problem

[1] The Authority in its substantive determination dated 26 May 2014¹ held that the applicant was unjustifiably dismissed. The respondent was ordered to \$1,250 including a reduction of 75% for Mr Zelinka's contributory behaviour pursuant to ss.123(c)(i) and 124 of the Employment Relations Act 2000 and costs were reserved.

[2] The applicant now applies for costs.

Issues

[3] The following issues are to be determined:

- a. What is the starting point for assessing costs?

¹ [2014] NZERA Auckland 205

- 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.² The current notional daily tariff is \$3,500. This matter involved a one day investigation meeting. The starting point for assessing costs is therefore \$3,500.

[5] The reasonableness of a party's actual costs incurred must be assessed prior to any award of costs. The applicant's costs memorandum contained a single sentence stating "*I am filing to apply for costs from the Respondent of \$1250*". I have no indication of what the applicant's actual costs were. There were no invoices filed or any breakdown of the costs incurred provided. To apply for a significant amount of costs without more information is perplexing.

[6] The respondent also filed a memorandum in reply, written in Maori. Given my below decision I do not need to refer to those submissions in detail, except to say they were received and considered.

[7] The parties were directed to file their costs submissions within 14 days of the determination. No further time for filing evidence shall be given.

[8] The basis for awarding costs in the Authority is a reasonable contribution to costs reasonably incurred. The Authority, like the Employment Court, must always make assessments, first, of what costs were actually incurred, second, the reasonableness of them in all the circumstances, and finally what should be a reasonable contribution to those costs reasonably incurred, again in all the circumstances of the parties and the case.³

[9] The lack of evidence about the applicant's actual costs incurred has left me in the position of being unable to properly assess costs in the manner set out above.

² *Mattingly v Strata Title Management Ltd* [2014] NZEMPC 15 at [16]

³ *Eastern Bay Independent Industrial Workers Union Inc v Pedersen Industries Ltd (No 2)* EmpC Auckland AC11B/09, 10 June 2009

[10] Accordingly the application fails given the lack of an evidential basis for assessing costs. Given this determination, there is no need to consider the second issue. The application for costs is dismissed.

TG Tetitaha
Member of the Employment Relations Authority