

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 69
5283479

BETWEEN DAVID JOHN BALDWIN
 Applicant

AND BOSSI'S HAIR AND BEAUTY
 LIMITED
 Respondent

Member of Authority: K J Anderson

Representatives: The Applicant In Person
 C Thomson, Advocate for Respondent

Submissions received: 16 December 2010 from Respondent
 Nil from Applicant

Determination: 22 February 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 18th November 2010 (AA 486/10), the Authority found that Mr Baldwin was an independent contractor; not an employee. As the successful party, the respondent has filed submissions on costs. Mr Baldwin has not filed any submissions in response.

[2] The respondent has incurred total costs of \$8,342.50 (excluding GST).¹ While acknowledging that under the tariff based approach of the Authority, and given that the investigation meeting took approximately half a day, a usual award of costs would be in the vicinity of \$1,500, the submission for the respondent is that costs should be awarded on a full indemnity basis. The respondent submits that this is because it believes that the claims of Mr Baldwin were “vexatious and frivolous.”

¹ Including attending mediation and preparing a Statement in Reply.

[3] I do not believe that an award of costs on a full indemnity basis is appropriate. This is largely because due to the considerable ambiguity in relation to the written agreement that the parties entered into, the preliminary matter of whether Mr Baldwin was an employee or not was arguable and hence required determination by the Authority. Further, it is not the general practice of the Authority to accept that mediation costs should be taken into account.

[4] Had it not been for the considerable ambiguity in the agreement entered into by the parties I most probably would have been more sympathetic towards a somewhat higher award of costs. While the Authority was only required to determine the preliminary matter regarding Mr Baldwin's working arrangement, it became obvious that there was very little merit to his substantive claims.

[5] Upon full consideration of all the circumstances, I conclude that an award of a sum of \$1,800 is appropriate.

Determination

[6] Mr Baldwin is ordered to pay to Bossi's Hair and Beauty Limited the total sum of \$1,800.00 as a contribution to the costs incurred.

K J Anderson
Member of the Employment Relations Authority