

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 257
5444116

BETWEEN BAY INTERNATIONAL
 LIMITED
 Applicant

A N D PETER HUTSON and ANYA
 HUTSON
 Respondents

Member of Authority: T G Tetitaha

Representatives: S Langton/R M Tomkinson, Counsel for Applicant
 D Alderslade/V Hodgson, Counsel for Respondents

Submissions received 23 May 2014 from Applicant
 6 June 2014 from Respondents

Date of Determination 24 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 16 May 2014¹ resolved a dispute about the interpretation and application of the respondent's employment agreements in favour of the applicant.

[2] The applicant now applies for costs. It does not specify the amount of its actual costs and how these were incurred.

Issues

[3] The following issues are to be determined:

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

¹ [2014] NZERA 192

- 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. 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.

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

[7] 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

[8] The lack of evidence about the applicants actual costs incurred has left the Authority in the position of being unable to properly assess costs in the manner set out above.

[9] 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

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