

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 57
3007812

BETWEEN MICHELLE BURROWS
Applicant

AND OTARA HEALTH CENTRE
LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in person
Simon Meikle for Respondent

Submissions received: 15 February 2018 from Applicant
2 February 2018 from Respondent

Determination: 21 February 2018

COSTS DETERMINATION OF THE AUTHORITY

A. Ms Burrows is ordered to pay Otara Health Centre Limited the sum of \$4,500 within 28 days of the date of this determination.

[1] In a determination dated 10 January 2018¹ I declined Ms Burrows' application for a finding that she had been constructively dismissed and determined that Otara Health Centre Limited had not breached its statutory obligations of good faith.

[2] I reserved costs, indicating that if the parties were unable to resolve costs, both parties would have the opportunity to file cost memoranda and evidence. The parties have been unable to resolve the matter and Otara Health has applied for costs.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. Under normal

¹ [2018] NZERA Auckland 8.

circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs.

[4] The Authority has the power to order any party to pay to any other party such costs and expenses the Authority thinks reasonable.² The principles applying to costs are well settled and do not require repeating.³

[5] An assessment of costs will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴

[6] Otara Health incurred costs of \$7,805 plus GST which on my assessment is reasonable. The investigation meeting took one day which means the starting point for calculation of the daily tariff is \$4,500.

[7] Otara Health seeks a contribution to its costs at the daily tariff of \$4,500. Ms Burrows says she has incurred costs of over \$38,000 and is still paying this sum off. She has submitted that she is not in a position to also contribute to Otara Health's costs. No financial or other information has been provided to support Ms Burrow's claims that she is not able to contribute to Otara Health's costs.

[8] In a Notice of Direction dated 15 May 2017 I reminded the parties that costs may be awarded against an unsuccessful party and that such costs had risen to \$4,500 for the first hearing day.

[9] Taking all the circumstances into account I consider it appropriate that Ms Burrows pay to Otara Health Centre the amount of \$4,500 as a contribution to its costs and that this payment be made within 28 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.