

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 383
5617051

BETWEEN ERIN THERESE DENT
Applicant
AND WAIKATO DISTRICT
HEALTH BOARD
Respondent

Member of Authority: TG Tetitaha
Representatives: E Dent in person
A Russell, Counsel for Respondent
Investigation Meeting: On the papers
Submissions: 22 September and 6 October 2017 from Applicant
15 September 2017 from Respondent
Date of Determination: 11 December 2017

COSTS DETERMINATION OF THE AUTHORITY

A. Each party is to meet their own costs.

Employment relationship problem

[1] The Authority in its substantive determination dated 25 August 2017¹ dismissed the application for reopening and transferred the single issue of pay parity to the Court.

[2] The respondent applies for costs. Its actual costs were \$2,275. It seeks a contribution of 80% or \$1,820.

¹ *Dent v Waikato District Health Board* [2017] NZERA Auckland 253.

What is the starting point for assessing costs?

[3] The Authority has adopted a notional daily tariff based approach to costs.² Matters lodged in the Authority from 1 August 2016 are subject to the increased daily tariff of \$4,500.³ This matter involved a one day investigation meeting. The starting point for assessing costs is therefore \$4,500.

[4] This matter was dealt with on the papers. The respondent's actual costs were \$2,275. Therefore the starting point must be \$2,275.

[5] This is not a case where indemnity costs would be granted. A further reduction to costs of one third is warranted. Therefore the starting point for costs shall be \$1,516.67.

Are there any factors that warrant adjusting the notional daily tariff?

[6] The respondent submits the tariff ought to be increased because:

- a) It was largely successful in the determination with the dismissal of the reopening and 16 of the 18 issues identified for determination;
- b) The applicant attempted to relitigate issues resolved in the 25 August 2017 determination;
- c) The expansion of issues from the single issue of pay parity originally identified to 18 issues;
- d) The applicant complicating matters by transforming an application for transfer into a reopening application.

[7] The amount of a party's success at hearing does not justify any increase in a tariff. The daily tariff is intended to partly compensate parties for their costs in litigation of a matter.

[8] Ms Dent's claim was not completely unmeritorious. She was successful in respect of an issue of pay parity. She would also be entitled to costs.

² *Mattingly v Strata Title Management Ltd* [2014] NZEmpC 15 at [16].
³ Practice Note 2 Costs in the Employment Relations Authority para.4.

[9] The number of applications Ms Dent filed did not greatly add to the parties costs. These issues were able to be managed to a determination on the papers without the need for parties to prepare evidence and to physically attend hearings.

[10] Ms Dent is not a lawyer nor does she have easy access to legal advice. Her 'strategy' in filing numerous applications does not appear to be conduct intended to slow or create additional costs for the Respondent. Rather she appears anxious to have all of her employment grievances heard. This has now occurred at least insofar as the Authority is concerned.

[11] I note the August determination is the subject of an appeal. The outcome shall affect costs again.

[12] Given Ms Dent's partial success, the low cost and economical way in which both parties have conducted this matter and the fact the issue of costs may be revisited dependent upon the appeal, costs are to lie where they fall.

[13] Each party is to meet their own costs.

TG Tetitaha
Member of the Employment Relations Authority