

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI Ā TARA ROHE**

[2023] NZERA 230
3153621

BETWEEN EOW
 Applicant

AND DOC
 Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Nikkii Flint, counsel for the Applicant
 Glenn Mason, counsel for the Respondent

Submissions received: 10 February 2023 from Applicant
 27 January 2023 from Respondent

Determination: 8 May 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] In its substantive determination of 13 January 2023, EOW was not successful with her claim of unjustified dismissal because the Authority found that EOW, at the relevant time, for various reasons, was not a person intending to work.¹ The Authority reserved the issue of costs and set a timetable for an exchange of submissions.

[2] The Authority received submissions on behalf of both parties.

[3] The non-publication order in respect of the parties' names in the substantive determination continues for this determination.

¹ *EOW v DOC* [2023] NZERA 14

The parties' submissions

[4] The respondent submits there are no reasons for any deductions and seeks an award of costs for a one-day hearing at the daily tariff rate of \$4500.00 but notes that actual costs incurred amounted to approximately \$11,000.00.

[5] The applicant submits the following factors are relevant to the Authority's consideration of costs:

- (a) age of the applicant;
- (b) the fact the respondent made no attempt to resolve costs between the parties;
- (c) the outcome was not straight forward or foreseeable;
- (d) the respondent's position was not accepted in totality by the Authority;
- (e) had it not been for the applicant's age and her mother's involvement, her claim would have been successful; and
- (f) the applicant was successful in her application for non-publication which was opposed by the respondent.

[6] The applicant notes the hearing finished early and submits a starting point at the rate of \$3,375.00 to reflect three quarters of a day in hearing time would be appropriate. She seeks deductions for various factors listed above and accordingly submits that \$2,500.00 would be an appropriate sum.

Discussion and conclusion

[7] Costs are a matter of discretion. The discretion is to be exercised in accordance with principle and not arbitrarily. The main principle in the exercise of the discretion is that costs follow the event. If a party is successful, they will be entitled to an award of costs. The respondents were successful.

[8] The starting point for costs based on the Authority's daily tariff is \$4,500.00 for the first day.² The Authority's record reflects the investigation meeting had concluded

² For further information about the factors considered in assessing costs, see www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

by mid-afternoon. The Authority can from the starting point of \$3,375.00 for three quarters of a day, consider whether there are factors that justify an increase or decrease in costs.

[9] I consider that there should be a small deduction based on the age of the applicant. While she was supported by her mother, the applicant was 16 years old at the time she filed the statement of problem. I also note the issues to be resolved were not straightforward and involved legal analysis of the law relating to contracts to reach a conclusion.

Order made

[10] I order that EOW pay to DOC costs in the amount of \$3000.00.

Sarah Kennedy-Martin
Member of the Employment Relations Authority