



# New Zealand Employment Relations Authority Decisions

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## Ellis v Young Nails 2008 NZ Limited (Auckland) [2018] NZERA 386; [2018] NZERA Auckland 386 (4 December 2018)

Last Updated: 12 December 2018

### IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 386  
3028771

BETWEEN PAULA ELLIS Applicant

AND YOUNG NAILS 2008 NZ LIMITED

First Respondent

Member of Authority: Vicki Campbell

Representatives: Alex Kersjes for Applicant

Benjamin Lupton for Respondent

Submissions received: 29 November 2018 from Applicant

29 November 2018 from Respondent

Determination: 4 December 2018

### COSTS DETERMINATION OF THE AUTHORITY

**A. Ms Ellis is ordered to pay to Young Nails 2008 NZ Ltd the sum of**

**\$1,000 as a contribution to its costs within 28 days of the date of this determination.**

[1] On 5 November 2018<sup>1</sup> I issued a determination in which I found the Authority did not have jurisdiction to investigate and determine Ms Ellis' claim against Young Nails 2008 NZ Ltd. This was because Ms Ellis was not an employee of Young Nails.

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

parties have been unable to resolve the matter.

<sup>1</sup> [2018] NZERA Auckland 342.

[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. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.<sup>2</sup> The principles applying to costs are well settled and do not require repeating.<sup>3</sup>

[4] 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.<sup>4</sup> The tariff may be adjusted upwards or downwards depending on the particular circumstances of the case.

[5] The investigation meeting took half a day including the issue of an oral determination. The starting point is \$2,250. Young Nails claims indemnity costs in the sum of \$8,906.50. I am not persuaded that an uplift to the daily tariff is warranted and do

not agree with Young Nails that indemnity costs is appropriate in the circumstances of this case.

[6] The matter was not complex and I did not require the preparation of formal witness statements. In all the circumstances I consider an appropriate contribution to Young Nails costs to be \$1,000.

[7] Ms Ellis is ordered to pay to Young Nails 2008 NZ Ltd the sum of \$1,000 as a contribution to its costs within 28 days of the date of this determination.

Vicki Campbell

Member of the Employment Relations Authority

<sup>2</sup> [Employment Relations Act 2000](#), Schedule 2, clause 15.

<sup>3</sup> *PBO Ltd v Da Cruz* [2005] NZEmpC 144; [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

<sup>4</sup> Practice Note 2, Costs in the Employment Relations Authority.

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