

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 394
3035831

BETWEEN FIDUCIA LIMITED
Applicant

A N D MARTY ROBINSON
Respondent

Member of Authority: T G Tetitaha
Representatives: C Piper, applicant director
M G Robinson in person
Investigation Meeting: On the papers
Submissions Received: 2 October 2018 from Respondent
9 October 2018 from Applicant
Date of Determination: 7 December 2018

**COSTS DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

A. Fiducia Limited is ordered to pay Marty Robinson the sum of \$2,250 as a contribution towards his legal fees.

Employment Relationship Problem

[1] The applicant withdrew its proceedings in the Authority on 1 October 2018. This was after preparation for a hearing on the papers about the jurisdiction of the Authority to hear this matter had been completed.

[2] The respondent seeks indemnity costs of \$12,865. The applicant seeks for costs to lie where they fall.

Indemnity costs

[3] Indemnity costs are only available when there has been exceptionally bad behaviour. Late withdrawal of a case does not meet the criteria of exceptionally bad

behaviour or otherwise justify an award of indemnity costs. Therefore costs shall be dealt with in accordance with the usual principles in the Authority.

Starting point for costs in the Authority

[4] Costs in the Authority are dealt with on the basis of daily notional tariff of \$4,500 for a one day hearing and \$3,500 for each hearing day thereafter. The starting point for costs in the Authority for a matter dealt with on the papers would normally be half of the first day daily notional tariff. The starting point here shall be \$2,250.

Are there any factors that require increasing or decreasing the costs?

[5] Costs usually follow the event i.e. a successful party is entitled to obtain a reasonable contribution to the costs incurred. The applicant's late withdrawal of its application does not prevent an award of costs

[6] The only fact raised in support of no costs is the refusal to mediate and an expectation the Authority would direct mediation instead of setting down a hearing regarding its jurisdiction to hear this matter. The applicant alleges it wished to avoid costs in the Authority determining jurisdiction by withdrawal. With respect it should not have filed an application in the Authority at all in these circumstances. This is not a basis to forgo costs.

[7] The respondent's costs of \$12,865 comprise \$2,990 external invoiced legal costs and recompense for his own time of \$9,875. The respondent is a qualified solicitor.

[8] The Supreme Court has recently reaffirmed a lawyer litigant in person is an exception to the primary rule that a successful litigant in person was entitled to recover disbursements but not costs.¹

[9] In my experience costs of \$12,865 are well in excess of what was required for this matter to be determined on the papers in the Authority. There is no basis to increase costs in these circumstances.

¹ *McGuire v Secretary for Justice* [2018] NZSC 116 at [55] ff.

[10] Fiducia Limited is ordered to pay Marty Robinson the sum of \$2,250 as a contribution towards his legal fees.

TG Tetitaha
Member of the Employment Relations Authority