

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 193
3038094

BETWEEN	FIRE CONTROL SERVICES LIMITED Applicant
AND	CHERRY BANNON Respondent

Member of Authority:	Rachel Larmer
Representatives:	Garry Pollak, counsel for the Applicant Allan Goldstone, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions and Other Information Received:	12 March 2019 from the Respondent 20 March 2019 from the Applicant 25 March 2019 from the Respondent
Date of Determination:	03 April 2019

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Fire Control Services Limited (Fire Control)'s claims against Ms Bannon did not succeed due to lack of evidence after the material it wanted to rely on was held to be inadmissible.

[2] Ms Bannon incurred legal costs of \$5,692.50 in connection with her defence of Fire Control's claims against her. Costs have not been agreed between the parties so Ms Bannon now seeks a costs order in her favour.

[3] Fire Control submits that costs should lie where they fall. Alternatively it submits that no more than \$500 costs should be awarded.

[4] The principles relating to the assessment of costs in the Authority are so well established I do not need to set them out again here. Suffice to say that a successful party will normally be entitled to an award of costs in their favour provided there is proof of the costs that have actually been incurred.

[5] The award of costs is discretionary, with the discretion to be exercised on a principled basis. The Authority adopts a notional daily tariff based approach to costs. The notional starting tariff is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.

[6] The notional daily tariff is to be adjusted if necessary to reflect the particular circumstances of this case.

[7] The Authority dealt with this matter on the papers to reduce costs to the parties. It is there appropriate to adopt a notional starting tariff of \$1,500 which reflects a notional two hour investigation meeting, pro-rated against the notional first day tariff.

[8] Ms Bannon suggested that Fire Control had unnecessarily increased her legal costs by unreasonably rejecting settlement offers, that if accepted would have saved both parties the time and cost that was expended.

[9] However Ms Bannon did not provide any documents, such as a 'without prejudice except as to costs settlement offer' with either her costs application or her reply submissions. Nor did Ms Bannon provide any explanation of how she claims Fire Control unnecessarily increased her legal costs.

[10] The Authority is not aware from its review of this matter of any behaviour by Fire Control that could be said to have unnecessarily increased Ms Bannon's legal costs. It appeared to have pursued this matter properly and professionally.

[11] Ms Bannon's claim that Fire Control unnecessarily increased her costs does not succeed due to lack of evidence to support such a claim.

[12] There are no factors that should result in an increase being made to the notional daily tariff.

[13] Fire Control submits that because Ms Bannon engaged in an “*egregious breach*” of her certified settlement, which was “*unconscionable and unreasonable*” each party should bear their own costs.

[14] That submission does not succeed because Fire Control’s claim to that effect did not succeed. The notional daily tariff therefore cannot be reduced on that basis.

[15] The Authority therefore considers there are no factors that should warrant a reduction being made to the notional daily tariff.

[16] Fire Control is ordered to pay Ms Bannon \$1,500 towards her actual legal costs within 28 days of the date of this determination.

Rachel Larmer
Member of the Employment Relations Authority