

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2015] NZERA AUCKLAND 279
5535258**

BETWEEN

GRAEME HICKS
Applicant

AND

INSTANT ACCESS NZ LTD
Respondent

Member of Authority: Eleanor Robinson
Representatives: Applicant in person
Troy Plummer, Counsel for Respondent
Submissions received: 7th August 2015 from Respondent
21st August 2015 from Applicant
Determination: 15th September 2015

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] By determination [2015] NZERA Auckland 194 I found that the Respondent, Instant Access NZ Ltd (Instant Access), did not owe the Applicant, Mr Graeme Hicks, unpaid wages in respect of it having failed to implement a salary increase of \$10,000.00 per year. However I did find that Instant Access owed Mr Hicks in the sum of \$100.00 in respect of unpaid expenses.

[2] In that determination costs were reserved. Submissions have been filed by the parties in respect of costs.

[3] Mr Troy Plummer, on behalf of Instant Access, claims that it succeeded in respect of the major claim, and that this represents 95% of the total time and cost expended on the matter by it.

[4] Mr Plummer submits that Instant Access clearly stated its position on the matter to Mr Hicks on several occasions, and that this position was upheld in determination [2015] NZERA Auckland 194. However the wide ranging approach of Mr Hicks to the issue

necessitated Instant Access expending significant time, effort and costs in responding to the various allegations raised by him in the presentation of his case.

[5] Mr Hicks submits that he did exhaust all zero costs opportunities to resolve his issues with Instant Access, but without success.

[6] Mr Hicks further submits that as Mr Plummer is an employee of Instant Access, what is claimed is therefore a disruption to his employer's business and lost time which should not be reflected in a costs award.

Determination

[7] The principles applicable to awards of costs in the Authority are well established. A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For a full day Investigation Meeting the normal tariff would equate to an award of \$3,500.00.

[8] The Investigation Meeting in respect of this matter was dealt with "on the papers". It was a relatively straightforward matter, no hearing was required and the matter was decided on the basis of a telephone conference and on written submissions from the parties.

[9] Costs are not usually awarded in a situation in which a party has been self-represented and incurred no external legal costs. I accept that defending personal grievance claims by an employee incurs costs to a business; however the purpose of a costs award is not to compensate a business for business disruption but for the cost of engaged legal assistance.

[10] Mr Plummer's job title is National OH&S Manager, Corporate Counsel. I accept that Instant Access has had the benefit of his legal expertise, but he is nonetheless an employee of Instant Access and not an external legal resource. Further I note that the list of itemised costs incurred by Instant Access have not been incurred as a result of engaging external legal assistance.

[11] In these circumstances I determine it appropriate that costs should lie where they fall.

Eleanor Robinson
Member of the Employment Relations Authority