

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 292  
5524869

BETWEEN VANESSA JONES  
Applicant  
AND MULDOONS INVESTMENTS  
LIMITED  
Respondent

Member of Authority: Rachel Larmer  
Representatives: Tanzam Hossain, Advocate for Applicant  
Clive Bennett, Advocate for Respondent  
Submissions Received: 09 September 2015 from the Applicant  
18 September 2015 from the Respondent  
Date of Determination: 24 September 2015

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**COSTS DETERMINATION OF THE EMPLOYMENT RELATIONS  
AUTHORITY**

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**Employment relationship problem**

[1] The Authority did not uphold Ms Jones' unjustified dismissal claim in a substantive determination dated 03 September 2015.<sup>1</sup> The parties were encouraged to resolve costs by agreement but that has not occurred.

[2] Muldoons Investments Limited (Muldoons) now seeks a costs order in its favour. Muldoons seeks full indemnity costs of \$8,125 plus GST. It claims that Ms Jones' claim was spurious, opportunistic, never likely to succeed and should not have been pursued.

[3] I do not accept that this is an appropriate case for indemnity costs. Costs will be assessed as per the Authority's usual notional daily tariff based approach to costs. The notional daily tariff is \$3,500. This involved a one day investigation meeting so the starting point for assessing costs is \$3,500.

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<sup>1</sup> [2015] NZERA Auckland 265.

*Factors warranting reduction in notional daily tariff*

[4] Ms Hossain submits that Ms Jones was impecunious and “*is a single woman with little funds, working part time in the hospitality industry*”. Ms Hossain also says that Ms Jones prepared the agreed bundle and that the matter was relatively straightforward.

[5] No evidence has been provided regarding Ms Jones’ means or lack thereof. Presumably the risk of costs being awarded against her was one of the issues that she factored in when deciding whether or not to pursue legal proceedings against Muldoons.

[6] Ms Jones has not herself incurred any legal costs as she was represented by a no-win/no-fee employment advocate. She is also working at least part time although no evidence of her earnings was provided to the Authority.

[7] I also am aware from the evidence given by Ms Jones at the substantive investigation meeting that she was on ACC for many months so that limited her ability to work and earnings over that period.

[8] In the absence of evidence regarding Ms Jones’ financial circumstances I find there are no factors which should result in a reduction to the notional daily tariff.

*Factors warranting an increase in the notional daily tariff*

[9] I do not accept Muldoons’ submissions that costs should be increased due to the unmeritous nature of the claim. Ms Jones’ case depended on credibility findings. Those findings went against Ms Jones so her claim did not succeed. I find that an application of the current notional daily tariff will do justice between the parties.

**Order**

[10] Ms Jones is ordered to pay Muldoons \$3,500 towards its actual legal costs.

**Rachel Larmer**  
**Member of the Employment Relations Authority**

