

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 195
5558938

BETWEEN DANIEL LOHR
Applicant

A N D ACCIDENT COMPENSATION
CORPORATION
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
P McBride, Counsel for the Respondent

Investigation Meeting: On the papers

Submissions: 13 June 2016 from the Applicant
10 May and 14 June 2016 from the Respondent

Date of Determination: 16 June 2016

COSTS DETERMINATION OF THE AUTHORITY

A. Daniel Lohr is directed to pay costs of \$1,750 to the Accident Compensation Corporation.

Employment relationship problem

[1] The Authority in its substantive determination dated 22 April 2016¹ held that the applicant was not an employee of the respondent. Costs were reserved.

[2] The respondent now applies for costs. Its actual costs are unknown. Despite this it seeks an award in the vicinity of \$5,250.

¹ *Daniel Lohr v. Accident Compensation Corporation* [2016] NZERA Auckland 123

What is the starting point for assessing costs?

[3] The starting point for assessing costs in the Authority is its daily notional tariff which is currently \$3,500 per hearing day. This matter was dealt with on the papers. Accordingly a starting point of half of the daily tariff is appropriate for this matter. It was relatively simple and did not require overly complex submissions or evidence.

[4] Therefore the starting point for costs will be \$1,750.

Are there any factors that warrant adjusting the notional daily tariff?

[5] The respondent submits the degree of preparation needed to be put into the case “*due to the nature of the application made by the applicant*” required “*the extensive amount of documentation filed in support*”.

[6] As noted above, this matter was relatively straightforward. It did not involve overly complex legal principles. The only documentation filed by the respondent was an affidavit and submissions in support. This is not a fact that requires any uplift.

[7] Although the respondent submits the applicant may have been “*misguided*” in his application is not a basis to increase costs.

[8] The applicant submits that there is a public interest issue and this matter is now the subject of an appeal. He states his claim was filed in good faith, he was unrepresented, financially devastated by the actions of the respondent and at a huge disadvantage. In the circumstances he submits the awarding of costs would be unfair.

[9] Costs follow the event. The respondent is entitled to seek a contribution towards its legal costs. The fact of an appeal does not prevent the Authority awarding costs. As accepted by the applicant the Court has already determined the legal tests to be applied to these types of matters. Therefore this matter is not a novelty nor does it warrant any deferment of costs on the basis of public interest in its outcome.

[10] Many claims are filed with best intentions but are simply wrong or do not meet the tests for employment. It is an applicant’s choice whether he or she obtains legal advice and representation. He was given ample opportunity to do so. If he elects not to, he cannot complain. This jurisdiction does not require applicants to be represented.

[11] Although the applicant states he has been financially devastated by the actions of the respondent, he does not provide any evidence of his financial situation.

[12] The applicant filed his submissions outside of the time allowed. I have read them because the respondent also sought time to file submissions outside of the directions which was granted. The non-compliance has not prejudiced the respondent. He was able to file submissions in reply. I do not take this as a matter requiring further costs to be granted.

[13] Daniel Lohr is directed to pay costs of \$1,750 to the Accident Compensation Corporation.

TG Tetitaha
Member of the Employment Relations Authority