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Maday v Avondale College Board of Trustees (Auckland) [2016] NZERA 620; [2016] NZERA Auckland 395 (5 December 2016)

Last Updated: 12 January 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2016] NZERA Auckland 395
5422543

BETWEEN CATRIONA MADAY Applicant

A N D AVONDALE COLLEGE BOARD OF TRUSTEES Respondent

Member of Authority: T G Tetitaha

Representatives: V Ammundsen, Counsel for Applicant

P Robertson, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 2 December 2016 from Applicant

31 November 2016 from Respondent

Date of Determination: 5 December 2016

COSTS DETERMINATION OF THE AUTHORITY

A. Each party shall meet their own costs. Employment Relationship Problem

[1] The Authority in its substantive determination dated 1 September 2016¹

granted leave extending the time for raising the personal grievance to 24 October

2014 pursuant to [s.114\(3\)](#) of the [Employment Relations Act 2000](#) (the Act). The hearing had to be adjourned to allow Ms Maday to file sufficient evidence resulting in

a half day of unnecessary hearing time.² Costs were reserved.

¹ *Maday v Avondale College Board of Trustees* [2016] NZERA Auckland 300

² Minute dated 1 August 2016.

[2] Both parties seek an interim determination of costs. This is because Ms Maday has filed an appeal against a determination of the Authority's refusal to allow Lawyer A to appear on her behalf.³ Her appeal is due to be heard tomorrow.

[3] The respondent seeks costs of \$5,500.

What is the starting point for assessing costs?

[4] The correct approach in the Authority for assessing costs is to adopt a starting point of its notional daily tariff. Given this matter was filed prior to 1 August 2016, the notional daily tariff to be applied here is \$3,500 per hearing day. This matter involved 1½ hearing days. Therefore the starting point for assessing costs is \$5,250.

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

[5] It is accepted the conduct of the first half hearing day created additional and unnecessary costs for the respondent and in respect of the second hearing day, Ms Maday was only partially successful on the basis of exceptional circumstances.

[6] The Courts have held where there is a measure of success by both parties, it may be appropriate for no order for costs to be made.⁴ A paper by Judge Inglis⁵ on the issue of costs in the Authority and its impact upon access to justice is pertinent here. The Authority's costs regime differs substantially from similar overseas jurisdictions. She also compares the Authority's role with the Family Court. Both are empowered to resolve parties' relationships. Only the Authority regularly imposes costs.

[7] The object of the Act is to "build productive employment relationships."⁶ I must in carrying out my role "support successful employment relationships" and "generally further the object of this Act."⁷ Ms Maday was seeking an indulgence from the Authority. However, I do not accept her case is similar to those cited as

³ *Maday v Avondale College Board of Trustees* [2016] NZERA 341.

⁴ *Health Waikato Ltd v Elmsly* [2004] NZCA 35; [2004] 1 ERNZ 172 (CA) at [39] followed in *Panovski v Marine Trimmers and All Awnings 2004 Ltd* EmpC Auckland AC24A/08, 16 December 2008.

⁵ Christina Inglis "Employment Litigation Costs" (paper presented to the ADLSi Seminar, Auckland, August 2016).

⁶ Section 3 of the [Employment Relations Act 2000](#).

⁷ Section 157(2) of the [Employment Relations Act 2000](#).

justifying an award of costs.⁸ Those matters were appeals and did not deal with the remedy of reinstatement.

[8] Given Ms Maday seeks reinstatement, to award costs at this stage would simply antagonise matters especially if she is ultimately successful. Any return to this workplace would not be assisted by having the spectre of a costs award to meet. In the circumstances I decline to make any award of costs.

[9] Each party shall meet their own costs.

TG Tetitaha

Member of the Employment Relations Authority

⁸ *McDonald v Health Technology Ltd* [1992] 2 ERNZ 735 at 755 (AC47/92) Judge Travis