

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 60
5423618

BETWEEN TOI LIAM MOERUA
Applicant

A N D TNL GROUP LTD
Respondent

Member of Authority: K J Anderson

Representatives: Toi Moerua, In Person
Dean Organ, Advocate for Respondent

Submissions Received: 7 January 2014 from Respondent
27 January 2014 from Applicant

Date of Determination: 21 February 2014

COSTS DETERMINATION OF THE AUTHORITY

[1] By a determination issued on 9 December 2013¹, the Authority found that there was no legal basis to the claim being pursued by Mr Moerua. The parties were requested to resolve the matter of costs but this has not been possible. The Authority has now received costs submissions from both parties in anticipation of the matter being determined.

[2] The submissions for the respondent inform that costs of \$3,059.00 (inclusive of GST) were incurred in defending the claim advanced by Mr Moerua. The respondent asks the Authority to award costs in the sum of \$3,000. Reference is made to the fact that Mr Moerua had little or no chance of being successful with his claim. Further, via an email dated 4 December 2013, TNL Group Ltd (TNL) provided Mr Moerua with an opportunity to withdraw his claim, the day before the investigation meeting, on the basis that if he did so, costs would not be claimed from him.

¹ [2013] NZERA Auckland 558

[3] The submissions for Mr Moerua refer to him incurring costs of \$3,187.50. However, as he was unsuccessful with his claim, his costs do not fall for consideration.

[4] Because it was quite a simple matter there was very little time occupied by the investigation meeting and if only the time occupied by the hearing is to be taken into account, based on the usual tariff approach adopted by the Authority², an award of costs in the sum of \$1,000 would be appropriate. However, it has to say that the claim advanced by Mr Moerua against TNL never had any possibility of success and it bordered on being vexatious. And because Mr Moerua had the opportunity to withdraw his claim without any cost consequences, it was little short of irresponsible for him to continue with the proceedings, particularly when it had been reasonably explained to him, on several occasions, that his claim was baseless. In the circumstances it is appropriate to award costs in the sum of \$1,500.

Determination

[5] Pursuant to clause 15 of Schedule 2 of the Act, Mr Moerua is ordered to pay to TNL Group Limited the sum of \$1,500.00 as a contribution to the costs incurred by the company.

K J Anderson
Member of the Employment Relations Authority

² \$3,500 for a one day hearing or \$1,750 for half a day.