

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 109
5414546

BETWEEN JOANNE MURPHY
 Applicant

A N D THE MARKETING TEAM
 (RECRUITMENT) LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Simon Mitchell, Counsel for Applicant
 Scott Leith, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 11 March 2014 from Respondent
 17 March 2014 from Applicant

Date of Determination: 26 March 2014

COSTS DETERMINATION OF THE AUTHORITY

A Ms Joanne Murphy is ordered to pay The Marketing Team (Recruitment) Limited (The Marketing Team) \$1,750 towards its actual costs.

Employment relationship problem

[1] The Authority in its substantive determination dated 04 March 2014¹ determined that it did not have jurisdiction to investigate the issues raised in Ms Murphy's Statement of Problem on the grounds that she was an independent contractor and not an employee.

¹ *Murphy v. The Marketing Team (Recruitment) Ltd* [2014] NZERA Auckland 73

[2] The parties were encouraged to resolve costs by agreement, but that has not been possible. The Marketing Team now seeks an award of \$3,500 costs. Ms Murphy submits that the maximum appropriate costs award should be \$1,000.

[3] The principles relating to costs in the Authority are so well settled that I do not set them out again here. I adopt the Authority's usual notional daily tariff based approach to costs with the current notional daily tariff being \$3,500.

[4] The substantive matter was dealt with on the papers so an actual investigation meeting was not required. Each party filed minimal evidence together with submissions in support of their position. I therefore approach this matter on the basis that it involved a half day investigation, so the notional starting point for assessing costs is \$1,750.

[5] I must then consider whether there are any factors which should result in an adjustment to the notional daily tariff.

[6] Mr Mitchell raised issues about The Marketing Team's invoices and in particular identified that one invoice predated the Authority's proceedings and that another invoice appeared to be excessive. He also queried whether some of the costs incurred related to mediation and noted that there had been "*large sums charged for attendances that are unidentifiable*".

[7] I find that The Marketing Team incurred costs of \$5,049.09 which is in excess of the amount it can expect to recover based on the Authority's notional daily tariff approach to costs. I do not have to determine whether or not the level of costs The Marketing Team incurred was or was not reasonable because I am satisfied that its actual costs were in excess of what it is able to recover based on the Authority's notional daily tariff approach to costs.

[8] I do not accept The Marketing Team's submission that an uplift to costs is justified on the basis that "*the preliminary matter of jurisdiction was decided comprehensively in favour of the respondent*". I accept Mr Mitchell's submission that this is not a distinguishing feature as all costs applications follow a party being unsuccessful in the Authority, so it does not entitle a party to an uplift as Mr Leith submits.

[9] I do not consider there are any factors which warrant an adjustment to the notional daily tariff.

[10] I consider that a pro rata apportionment of the Authority's current notional daily tariff based on a half day investigation meeting results in an appropriate award of costs to recognise The Marketing Team's success in respect of its challenge to jurisdiction.

[11] Accordingly, Ms Murphy is ordered to pay The Marketing Team \$1,750 towards its actual costs.

Rachel Larmer
Member of the Employment Relations Authority