

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 19
5359924

BETWEEN

NAOMI PATTERSON
Applicant

AND

PACIFIC ISLAND
EDUCATION RESOURCE
CENTRE TRUST
INCORPORATED
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
Prue Kapua, Counsel for Respondent

Submissions received: 05 January 2011, from Respondent
10 January 2012, from Applicant
16 January 2012, from Respondent

Determination: 17 January 2012

COSTS DETERMINATION OF THE AUTHORITY

**A Pacific Island Education Resource Centre Trust Incorporated's
application for a contribution towards its legal costs is declined.**

[1] In a determination dated 20 December 2011 the Authority concluded that it did not have jurisdiction to hear Ms Naomi Patterson's personal grievance claim against her former employer, Pacific Island Education Resource Centre Trust Incorporated ("PIERCTI").

[2] The parties were encouraged to agree costs with a timetable being set for costs to be dealt with by way of an exchange of memoranda in the event agreement was not reached.

[3] Agreement was not reached, and on 5 January 2012 PIERCTI applied to the Authority for an award of costs in its favour. PIERCTI submitted that it had incurred actual costs of \$4,800 against which it sought an award of \$3,200. It attached an invoice dated 8 December 2011 (which predated the investigation meeting held on 20 December 2011) which was made out to “*Pacific Education Trust*” for \$3,637.50. There was no reference made in the invoice to PIERCTI.

[4] This matter involved an investigation meeting of approximately one hour.

[5] Applying the Authority’s normal daily tariff based approach to costs, based on a notional daily tariff of \$3,000, then the notional starting point for an award of costs in respect of this matter would be \$500. The Authority is then required to determine whether there are any particular factors which would warrant adjusting this notional daily tariff of \$500. If so, then that amount would be either increased or decreased to reflect the specific circumstances of this case.

[6] Although PIERCTI as the successful party would normally be entitled to a contribution towards its actual legal costs, it is not appropriate to award costs to a party which has not actually incurred any legal costs.

[7] Ms Patterson submitted that there was no evidence that PIERCTI had incurred any costs in respect of her claim because the invoice it had relied on in support of its costs application was made out to Pacific Education Trust (“PET”), not PIERCTI.

[8] The correct legal identity of Ms Patterson’s employer was an issue which took up considerable time both before, and during, the investigation meeting. After being given time to establish the correct legal position, both parties agreed that PET did not appear to be a legal entity and that it had not been Ms Patterson’s employer.

[9] Although PIERCTI responded to Ms Patterson’s submissions on 16 January 2012 it did not address her point that it had not actually incurred any legal costs itself. Nor did PIERCTI provide any evidence to establish that it (and not some other person, organisation, or entity) had actually incurred any legal costs in respect of Ms Patterson’s claim.

[10] This meant that the only evidence before the Authority in support of PIERCTI's costs application was the invoice to PET dated 8 December 2011.

[11] That evidence did not satisfy me that PIERCTI had actually incurred any legal costs because the invoice established that another entity (PET) had been billed for the legal costs associated with Ms Patterson's claim. The invoice also predated the Authority's investigation so it did not establish that any costs had been incurred with the actual investigation.

[12] There was also no evidence of any arrangement between PIERCTI and PET for PIERCTI to reimburse PET for any legal costs it had incurred in respect of Ms Patterson's claim, notwithstanding that Ms Patterson in her submissions had clearly put PIERCTI on notice that she was challenging whether it had in fact actually incurred any legal costs itself.

[13] PIERCTI was legally represented so it was in a position to adequately respond to Ms Patterson's submission by providing the Authority with evidence that it had actually incurred the legal costs it had submitted had been incurred, notwithstanding the fact that an entirely separate entity had been invoiced for a large proportion of the costs it was claiming reimbursement of. However, it failed to do so.

[14] An award of costs is discretionary. I consider it is not appropriate to exercise the discretion to award costs in circumstances where the Authority is not satisfied that the party claiming costs has actually incurred any legal costs.

[15] Accordingly, PIERCTI's application for a contribution towards its legal costs is declined on the basis there was no evidence it had actually incurred any legal costs itself.

Rachel Larmer
Member of the Employment Relations Authority