

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 37
5408347

BETWEEN CHRISTOPHER SCOTT ROY
Applicant

A N D BOARD OF TRUSTEES OF
TAMAKI COLLEGE
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
E McWatt/R Harrison, Counsel for Respondent

Submissions Received: 7 January 2014 from Applicant
18 December 2013 from Respondent

Date of Determination: 3 February 2014

COSTS DETERMINATION OF THE AUTHORITY

A. Mr Roy is ordered to pay the Board of Trustees of Tamaki College the sum of \$3,500 as a contribution towards legal costs.

Employment relationship problem

[1] The Board of Trustees of Tamaki College (Tamaki College) applied for costs following the successful defence of Mr Roy's personal grievance claim¹. Tamaki College seeks a contribution towards its actual costs of \$13,510.90 greater than the Authority's notional daily tariff. This is because the litigation was unnecessary due to the previous settlement, had limited prospects of success, resulted in findings firmly in favour of the respondent and brought a significant degree of media attention.

¹ *Roy v. Board of Trustees for Tamaki College* [2013] NZERA Auckland 514

[2] Mr Roy submits no order for costs should be made. This is because the respondent did not intend to seek costs originally, the application was made outside the 14 day period for filing, is a ‘knee jerk’ reaction to his appeal, there were errors in the Authority’s original determination, “too many acts of prevarication, blatant lies and perjury” by the respondent and the Employment Court has agreed to hear this matter de novo.

Issues

[3] The following issues in respect of costs are to be determined:

- (a) Should there be an award of costs?
- (b) What is the starting point for assessing costs;
- (c) Are there any factors that warrant adjusting the notional daily tariff?

Should there be an award of costs?

[4] Two of Mr Roy’s costs submissions are dealt with here, namely, the respondent’s motivation in seeking costs and late filing of costs submissions.

[5] There was no binding agreement between the parties preventing the respondent applying for costs. Costs would normally follow the event.² Given the respondent’s successful defence of the personal grievance claim, contribution towards its actual legal costs is appropriate.

[6] The application was filed on 18 December 2013. This is within the 14 day period for filing as set out in the amended determination dated 4 December 2013. Even if the filing was late as alleged by two days, there was no prejudice to Mr Roy.

[7] Given the above an award of costs is appropriate in the circumstances.

What is the starting point for assessing costs?

[8] The starting point for assessing costs in this matter is the Authority’s usual daily tariff. The current notional daily tariff is \$3,500. This matter involved a one day investigation meeting. Accordingly, the starting point for assessing costs is \$3,500.

² *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808

[9] The respondent produced copies of its invoices but does not detail any hourly rate, whether the costs relate to one or two counsel or the work covered in respect of each month's invoice.

[10] The parties were directed to file costs submissions within 14 days of the date of the determination. No further time for filing evidence shall be given. The lack of detailed invoices impacts upon the basis for increasing the notional daily tariff below.

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

Factors which warrant a reduction of the notional daily tariff

[11] Mr Roy's remaining costs submissions are considered here as factors warranting a decrease in the notional daily tariff. Alleged errors in the Authority's original determination are not matters affecting costs. They are matters for appeal.

[12] The respondent's alleged conduct is relevant to reducing costs awarded if it unnecessarily increased costs. Mr Roy, through his then legal counsel, was given ample opportunity to examine the respondent's conduct during hearing. None of the respondent's alleged conduct was proven at hearing. None of the respondent's alleged conduct can therefore be said to have contributed to increased costs.

[13] The hearing of Mr Roy's appeal on a de novo basis would have been by his election. This is not conduct by the respondent warranting a reduction in costs.

[14] Given the above, the Authority determines there are no factors justifying a reduction of the notional daily tariff.

Factors warranting an increase of the notional daily tariff

[15] The respondent's submissions seeking increased costs are considered here. The notional daily tariff is assumed to be a 'reasonable' contribution toward parties actual legal fees, absent any factors warranting increased costs.

[16] The fact a party is wholly unsuccessful does not warrant an increase in the notional daily tariff. Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct, although conduct which increased

costs unnecessarily can be taken into account in inflating or reducing an award³. There is no evidence Mr Roy's conduct increased costs unnecessarily.

[17] Media attention is not a factor affecting costs.

[18] Given the above, the Authority determines there are no factors justifying an increase in the notional daily tariff.

Determination

[19] Accordingly, Mr Roy is ordered to pay the Board of Trustees of Tamaki College the sum of \$3,500 towards its actual legal costs.

T G Tetitaha
Member of the Employment Relations Authority