

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 192
5466021

BETWEEN HELLEN SMITH-HUGHES
Applicant

A N D TE WHANAU O HATO
PETERA TRUST
Respondent

Member of Authority: TG Tetitaha

Representatives: D Flaws, Advocate for Applicant
 D Takitimu, Counsel for Respondent

Investigation Meeting: On the papers

Submissions: 28 April 2015 from Applicant
 12 May 2015 from Respondent

Date of Determination: 26 June 2015

COSTS DETERMINATION OF THE AUTHORITY

A. The parties shall meet their own legal costs.

Employment relationship problem

[1] The Authority in its substantive determination dated 14 April 2015¹ dismissed the application for personal grievance and wage arrears due to overtime. The respondent was ordered to pay wage arrears of \$523.66.

[2] The respondent seeks indemnity costs.

¹ *Smith-Hughes v Te Whanau o Hato Petera Trust* [2015] NZERA Auckland 109

Issues

[3] The following issues are to be determined:

- a. Should the respondent be awarded indemnity costs?
- b. If not, what is the starting point for assessing costs?
- c. Are there any factors that warrant adjusting the notional daily tariff?

Should the applicant/respondent be awarded indemnity costs?

[4] The leading case on indemnity costs is the Court of Appeal decision in *Bradbury & Ors v. Westpac Banking Corporation*². Indemnity costs are exceptional so require “*exceptionally bad behaviour*” or may be awarded where a party has behaved either badly or very unreasonably.³

[5] This matter does not meet the very high threshold required before indemnity costs may be imposed.

What is the starting point for assessing costs?

[6] The correct approach to assessing costs in this matter is for the Authority to adopt its usual notional daily tariff based approach to costs.⁴ The current notional daily tariff is \$3,500. This matter involved a one day investigation meeting. The starting point for assessing costs is therefore \$3,500.

[7] The respondent has not filed copies of its invoices or a breakdown of the costs it has charged to the respondent. I have no evidence the respondent was charged for this work at all and no way of assessing whether an award of costs at the notional daily tariff would exceed the amounts charged.

[8] In the absence of evidence of the costs incurred I decline to award any costs. Accordingly the parties shall meet their own legal costs.

TG Tetitaha
Member of the Employment Relations Authority

² [2009] NZCA 234

³ Supra

⁴ *Mattingly v Strata Title Management Ltd* [2014] NZEMPC 15 at [16]