

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 55
5465599

BETWEEN RICKY HENRY CONWELL
 STIRLING
 Applicant

AND SHERRYNDALE LIMITED
 Respondent

Member of Authority: Michele Ryan

Representatives: Applicant in person
 Digby Livingston, Advocate for the Respondent

Submissions received: 8 April 2015 from the Respondent
 Scheduled for 30 April 2015 but not provided by the
 Applicant

Determination: 28 May 2015

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination issued on 17 March 2015¹ I found the applicant had not been able to establish he had been unjustifiably constructively dismissed. Costs were reserved.

[2] The respondent is now seeking costs and has furnished submissions to this effect. Despite notice, the applicant has not responded to the costs application. The respondent provided a detailed breakdown of costs, (including disbursements and incidentals), directly associated with defending the claims the applicant made against it. The total sum is \$3363.75².

[3] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act which states:

¹ *Conwell v Sherryndale Limited* [2015] NZERA Wellington 22

² including GST

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[4] The discretion to award costs should be exercised in a principled manner and not arbitrarily. Costs generally follow the event. Any award of costs should not 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 terms of an award.

[5] The usual approach of the Authority is to assess costs using a notional daily tariff of \$3,500 per day of investigation. The Authority has the discretion to raise or lower the tariff depending on the circumstances of the matter.

Determination

[6] The investigation meeting took almost a full day. There were no complex procedural issues or matters of law that arose in the investigation, nor was the matter progressed before the Authority in anything other than in the usual and accepted ways.

[7] The usual approach of the Authority is to assess costs using a notional daily tariff of \$3,500 per day of investigation.

[8] The respondent's accrued costs are below the generally accepted tariff rate. I am unwilling to apply the full tariff as I consider it would be inappropriate to make an award above the amount sum incurred by the respondent and it should not expect to obtain a monetary gain from the endeavour.

[9] Work undertaken on behalf of the respondent consisted of preparation of a statement in reply, detailed written witness statements, attendance at the conference call and investigation meeting, and written submissions. My assessment is that the respondent's costs are modest and entirely reasonable in all the circumstances. It is appropriate in the context of this matter then that I make an award equal to the entirety of its reasonable costs, including disbursements.

Order

[10] Pursuant to Section 15 of Schedule 2 of the Employment Relations Act I order the applicant to pay the respondent the sum of \$3363.75.

Michele Ryan
Member of the Employment Relations Authority