

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 30  
5419501

BETWEEN                      KARYN TAIAPA  
   Applicant  
  
AND                                AOTEA FINANCE LIMITED  
   Respondent

Member of Authority:      Robin Arthur  
  
Representatives:            Anamika Singh, Counsel for the Applicant  
   Sylvia Wood, Advocate for the Respondent  
  
Submissions:                23 December 2013 from the Applicant and 28 January  
   2014 from the Respondent  
  
Determination:              30 January 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A.      Aotea Finance Limited (AFL) must pay Karyn Taiapa \$8000 towards the costs of legal representation she incurred in relation to her personal grievance.**

[1]      Following the Authority’s determination that Aotea Finance Limited (AFL) unjustifiably dismissed her, Karyn Taiapa sought an order for her full solicitor-client costs of \$13,620.<sup>1</sup> Alternatively, if costs were not awarded on an indemnity basis, she sought an uplift in the usual daily tariff of \$3500 because additional time and cost was required to prepare for and attend the hearing due to “*the number of instances about which evidence had to be given where [AFL] failed to comply with its obligations to [Mrs Taiapa]*”.

[2]      AFL, by reply memorandum, accepted Mrs Taiapa was entitled to a costs award but submitted there were no grounds for an order above the usual tariff applied

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<sup>1</sup> [2013] NZERA Auckland 570.

to the two days of the investigation meeting, that is a total of \$7000.

[3] Mrs Taiapa's memorandum on costs did not establish the grounds necessary for an award of costs on an indemnity basis. It referred, firstly, to a lack of merit in AFL's response to the personal grievance application; secondly, to the number of instances (of alleged misconduct or irregularities in Mrs Taiapa's work) about which evidence needed to be prepared for the Authority's investigation; and, thirdly, to Mrs Taiapa's "*comprehensive win of all her claims*". Those references did not sufficiently establish exceptionally bad behaviour by AFL that should be marked by requiring it to pay Mrs Taiapa's full solicitor-client costs.

[4] However, in exercising the Authority's statutory discretion to award costs subject to the relevant principles, I considered there was one aspect of AFL's conduct of its employment investigation – during which Mrs Taiapa was represented by counsel – that did warrant an increase on the usual tariff to contribute towards the increased costs she consequently incurred.<sup>2</sup>

[5] The evidence available for the Authority investigation included correspondence between the parties' representatives that showed some time was spent 'wrangling' over whether AFL would locate and provide copies of various customer files and other internal records that were relevant to the accusations the company made about how Mrs Taiapa had carried out her work and about the veracity or accuracy of complaints made by some customers about her dealings with them. Some of that material was eventually provided on the basis Mrs Taiapa could only look at it in at her solicitor's office. Those documents were clearly relevant, as demonstrated by the amount of time spent considering them during the Authority's investigation meeting. AFL unnecessarily increased the costs Mrs Taiapa incurred in paying for her solicitor to prepare and consider the correspondence exchanged on the topic before they were eventually provided.

[6] Accordingly I considered a modest uplift of \$500 to the usual daily rate was appropriate. The increase was not to punish AFL for its conduct in its dealings over finding and providing relevant documents but rather it recognises Mrs Taiapa's legal costs were increased because of the additional time her solicitor needed to look at

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<sup>2</sup> Clause 15(1) of Schedule 2 of the Employment Relations Act and *PBO Limited v Da Cruz* [2005] 1 ERNZ 808.

whether documents initially provided were adequate, what was still missing and to correspond further with AFL's representative on the issue.

[7] Applying an increased daily tariff of \$4000 for each of the two days needed for the Authority's investigation, \$8000 was the total amount I considered AFL should be ordered to pay Mrs Taiapa as a contribution to what I accepted were her reasonably incurred costs of legal representation to successfully bring her personal grievance application before the Authority.

Robin Arthur  
Member of the Employment Relations Authority