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Wate v Talbot Agriculture Limited (Christchurch) [2017] NZERA 1216; [2017] NZERA Christchurch 216 (14 December 2017)

Last Updated: 2 January 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2017] NZERA Christchurch 216
5639390

BETWEEN FRANKLYN WATE Applicant

AND TALBOT AGRICULTURE LIMITED

Respondent

Member of Authority: Andrew Dallas

Representatives: John Horan, Advocate for the Applicant

Craig O'Connor, Counsel for the Respondent

Determination: 14 December 2017

COSTS DETERMINATION OF THE AUTHORITY

Narrative

[1] By determination issued on 26 October 2017, the Authority made findings about Franklyn Wate's employment relationship problem with Talbot Agriculture Limited (Talbot).

[2] The determination reserved costs but encouraged the parties to resolve that issue themselves. It included an indication that, if asked to determine costs, the Authority's assessment would be the notional daily tariff of \$4500.

[3] In a memorandum on costs subsequently lodged by Mr Wate, through his representative, he sought an order for a costs award of \$22,526.40. No evidence, such as invoices, was provided in support of this claim. Upon review it was apparent the costs sought were, in effect, indemnity costs and included various disbursements, such as travel expenses, and costs associated with mediation.

[7] The starting point of any costs assessment is the notional daily tariff of \$4500. Mr Wate has provided no evidence in support of his claim for an uplift in this amount. I accept Talbot's submission that it is very difficult to properly assess Mr Wate's claim for disbursements in the absence of such evidence.

[8] What is clear, however, is that as a general rule costs are not available for attending mediation.¹ Costs may be available where the conduct of one party falls into the category of "aggravated" circumstances² or where there has been a serious breach of good faith by a party directed to mediation under s 152(2) of the Employment Relations Act. Neither was the situation here.

Result

[9] Taking into account all relevant circumstances, the sum of \$4500 must be paid to Mr Wate within 28 days of the date of this determination.

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Andrew Dallas

Member of the Employment Relations Authority

1 *Trotter v Telecom New Zealand Limited* [\[1993\] NZEmpC 173](#); [\[1993\] 2 ERNZ 935](#), 937 and *Naturex Limited v Rogers* [\[2011\] NZEmpC 9](#) at [\[16\]](#).

2 *Real Cool v Gunfield* [\[2009\] NZEmpC 127](#) at [\[3\]](#)

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