

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 205  
3209179

BETWEEN ANNA WILLIAMS  
Applicant

AND THE LEARNING STAIRCASE  
LIMITED  
Respondent

Member of Authority: Peter van Keulen

Representatives: Paul Mathews, advocate for the Applicant  
Ros Lugg for the Respondent

Investigation Meeting: On the papers

Submissions Received: 21 March 2024 from the Applicant  
2 April 2024 from the Respondent

Date of Determination: 9 April 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1] In a determination dated 15 March 2024,<sup>1</sup> I found that The Learning Staircase Limited (TLS) had not unjustifiably dismissed Anna Williams but TLS's suspension of Ms Williams was unjustified. I ordered TLS to pay Ms Williams \$6,000.00.

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<sup>1</sup> *The learning Staircase Limited* [2024] NZERA 150.

[2] In my determination I reserved costs so that the parties could try to agree costs. The parties have not agreed costs and now Ms Williams seeks costs.

### **Application for costs**

[3] Ms Williams seeks an award of costs of \$7,000 together with \$71.56 for the lodgement fee and \$153.33 for hearing fees. Ms Williams seeks this amount based on the application of the daily tariff, conceding a modest reduction to reflect her mixed success.

[4] TLS says Ms Williams should not be awarded any costs because:

- (a) She failed in her unjustifiable dismissal claim.
- (b) Both her and her advocate's behaviour during the events that gave rise to her claim were unhelpful as they failed to engage; had they done so and acted in good faith then this matter could have been resolved and would not have ended up in the Authority.
- (c) She did not negotiate the payment of costs; she simply demanded a sum through her advocate.

### **Analysis**

#### *Costs in the Authority*

[5] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.<sup>2</sup>

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<sup>2</sup> For further information about the factors considered in assessing costs, see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).

*Costs follow the event*

[6] The presumption with costs is that costs should follow the event; that is the successful party should be awarded costs from the other party. So, this is my first consideration. Ms Williams was successful so she should be awarded costs unless there is some reason to depart from this practice.

*Mixed success*

[7] TLS says that there has been mixed success as Ms Williams only succeeded in one claim, which was the lesser claim.

[8] The question of mixed success and an applicant's entitlement to costs has been resolved by the Employment Court in *William Coomer v JA McCallum and Son Limited*.<sup>3</sup> The position is that any success for an applicant is sufficient success for the purposes of costs; it does not matter that an applicant may have lost a significantly larger or more complex claim if it was successful with any claim.

[9] Applying the principle here, there is no reasons to change the initial position. Ms Williams was successful in one claim and is entitled to an award of costs.

*Applying the daily tariff*

[10] The normal practice of the Authority when setting costs is to apply a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff.

[11] The current daily tariff is \$4,500 for the first day of an investigation meeting and \$3,500 for every subsequent day of an investigation meeting.

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<sup>3</sup> *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

[12] There is no reason to depart from this normal approach so I will calculate the award of costs based on the daily tariff.

[13] The investigation meeting for this matter took one and a half days so the starting point for any costs award is \$6,250.

*Adjusting the daily tariff*

[14] The daily tariff can be adjusted for relevant factors, including for mixed success and behaviour of a party that unnecessarily increases costs.

*Mixed success*

[15] Ms Williams had two claims: unjustifiable dismissal and unjustified action causing disadvantage. And she was only successful on the unjustified disadvantage grievance.

[16] So, there is mixed success that is relevant to a reduction in the daily tariff.

[17] In this case I conclude that an appropriate reduction is \$1,000 for the first day of the investigation meeting and \$500 for the second, half day.

*Conduct of Ms Williams and her advocate*

[18] I am not satisfied that either Ms Williams or her advocate acted in a manner that impacted on the costs in this matter.

[19] There may be a basis to suggest a more constructive approach to the disciplinary process might have resulted in an agreement on matters such that a claim would never have been lodged. However, this is too remote to the question of costs for it to be an argument to consider. It is simply too difficult to say what might have occurred if either party had acted differently during the events that gave rise to this claim.

[20] In this case allegations of behaviour or conduct by Ms Williams or her advocate are not matters that are a basis for reducing the daily tariff.

*Negotiating costs*

[21] TLS refers to the failure by Ms Williams to negotiate any costs payment. This is not a basis on which the daily tariff can be reduced.

*Conclusion*

[22] Ms Williams was the successful party and is entitled to receive an award of costs. The daily tariff should be applied to calculate the quantum of the award but subject to a reduction of \$1,500. This means Ms Williams is entitled to an award of costs of \$4,750.

[23] Ms Williams is also entitled to the disbursements she has sought of \$71.55 for the filing fee and \$153.33 for the hearing fees.

**Order**

[24] The Learning Staircase Limited is to pay Anna Williams \$4,750 as a contribution to her costs in this matter. The Learning Staircase Limited must also pay Anna Williams \$224.88 for disbursements.

Peter van Keulen  
Member of the Employment Relations Authority