

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 269
3119992

BETWEEN	RAVI BHOJWANI Applicant
AND	BAKER PROPERTY SERVICES LIMITED Respondent

Member of Authority:	Claire English
Representatives:	Allan Halse, advocate for the Applicant Jessi Laphorne and Joseph Williams, counsel for the Respondent
Submissions received:	Up to 26 April 2024 from Applicant Up to 19 April 2024 from Respondent
Determination:	7 May 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] On 13 October 2023, the Authority issued a determination in this matter, dismissing the applicant's claims of unjustifiable dismissal, unjustified disadvantage, and breach of good faith.¹ No orders were made in favour of the applicant.

[2] In that determination, the parties were encouraged to resolve any issue of costs between them, and the Authority made reference to its usual practice of applying the daily tariff to determine costs.

[3] The parties have not been able to resolve costs between themselves, and have filed memoranda accordingly.

¹ [2023] NZERA 673.

Relevant Background

[4] The respondent submits that a contribution to costs of \$15,000 would be appropriate, based on a starting point of a 3-day investigation meeting, with an uplift to take into account the applicant's rejection of two Calderbank offers, and conduct of the applicant at and immediately after the investigation meeting which it says gave rise to unnecessary costs. In addition, the respondent has sought costs on this application.

[5] The applicant stated in his submissions that he sought a stay of costs, as a de novo challenge had been filed in the Employment Court, continuing with the costs claim would unfairly prejudice the applicant and if successful, the challenge would set aside the determination and have consequential effects on any costs award.

[6] The applicant's advocate did not file any submissions on the costs sought by the respondent. The Authority wrote to the applicant, asking for comment on the costs sought by the respondent. Correspondence occurred and the applicant's advocate asked the Authority to determine its application for a stay of costs.

[7] The Authority declined the application for a stay on 1 March 2023. Further time was provided to the applicant to file costs submissions. The applicant instead requested the summons of a third party, which application was considered and declined on 26 March 2024. Time was again provided to the applicant to file costs submissions, together with advice that if no such submissions were received, the Authority would proceed to determine the matter.

[8] As no costs submissions have been received for the applicant, I now proceed to determine the matter.

Contribution to Costs

[9] The power of the Authority to award costs is contained in cl 15 of schedule 2 of the Employment Relations Act 2000 (the Act). The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.²

² For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

[10] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[11] The investigation meeting in this matter was for three days and was held in person.

[12] In the present case, the respondent submits that the starting point is the tariff for a three-day hearing, being \$11,500. The respondent states that it has incurred legal costs in excess of this, and that an uplift of \$3,500 should be given, taking into account:

- a. that the respondent made two Calderbank offers to the applicant to settle the matter prior to hearing, and given that the applicant was wholly unsuccessful in his claims, acceptance of either offer would have put him in a significantly better position; and
- b. the applicant's repeated refusal to disclose documents even in the face of a direction of the Authority to do so which added to legal time and costs for the respondent.

[13] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*³ as confirmed in *Fagotti v Acme and Co Limited*⁴. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful party's conduct.

[14] The correct starting point is the tariff for a three-day investigation meeting, being \$11,500. Both the turning down of multiple Calderbank offers and the additional correspondence required to deal with necessary documents are factors which require an uplift.

[15] The respondent has asked for an uplift of \$3,500, being the equivalent of a further day. In the circumstances, my view is that an uplift equivalent to half a day is

³ [2005] 1 ERNZ 808.

⁴ [2015] NZEmpC 135 at 114.

appropriate to recognise the unexplained rejection of the Calderbank offer, that is, an uplift of \$1,750.

[16] In addition, I consider it appropriate to recognise the additional time, effort, and cost, that the respondent has been put to in responding to multiple additional interlocutory matters raised by the applicant. A contribution of a further \$1,000 is appropriate in respect of these matters. This amounts to a total contribution to costs of \$14,250. Orders are made accordingly.

[17] The respondent has also requested that a further \$1,440.50 in costs be awarded in respect of this costs application. This is said to be on the grounds that the applicant did not respond directly to the proposal to settle costs put forward by the respondent.

[18] The Authority's practice is not to award "costs on costs". In short, the applicant may elect to have costs determined by the Authority, which has occurred, and uplifts have already been granted. No further costs are awarded.

Orders

[19] Ravi Bhojwani is ordered to pay to Baker Property Services Limited within 28 days of the date of this determination the sum of \$14,250 as a contribution to costs.

Claire English
Member of the Employment Relations Authority