

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 671  
3173324

BETWEEN                      LINDA JANE BULLEN  
   Applicant  
  
AND                                FLIWAY TRANSPORT LIMITED  
   Respondents

Member of Authority:        Philip Cheyne  
  
Representatives:              Karen Glass and Erika Whittome, advocates for the Applicant  
   Daniel Erickson, counsel for the Respondent  
  
Submissions Received:        14 August and 1 September 2023 from the Applicant  
   18 August and 11 September 2023 from the Respondent  
  
Date of Determination:        13 November 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In an earlier determination, I found that Linda Bullen was unjustifiably dismissed by Fliway Transport Limited (Fliway) and ordered reimbursement of wages and compensation in settlement of the personal grievance. Costs were reserved. I now have submissions from both parties. This determination resolves the issue of costs.

[2]     There are two submissions from each party because the applicant's first submission included some material that needed to be redacted, as pointed out in counsel's reply. The applicant's advocates lodged a second submission, with redactions and amended submissions. Counsel requested and was given the opportunity to lodge a response to the second submission.

[3] The applicant now seeks costs of \$26,170.00. The submission includes a table, based on the practice adopted by the Employment Court. Different amounts are claimed at the rate of \$2,400.00 per day for the time attributed to different steps in the Authority's investigation. A further \$6,250.00 is claimed based on the Authority's standard daily tariff for an investigation meeting that lasted about one and a half days.

[4] The argument in support of what would be a significant departure from the Authority's usual approach to assessing costs is that the case was of an "unprecedented nature" and due to the "novelty of the issues" that arose around an employer's Covid-19 policy.

[5] The general principle is that costs follow the event. Ms Bullen was successful and is entitled to costs in the usual way. It is not suggested that this principle should be departed from here.

[6] However, the respondent says that an uplift to \$26,170.00 would be inconsistent with the Authority's typical approach and applicable principles as set out in an earlier judgment of the Employment Court.

[7] The applicant has not established any proper basis for the Authority to assess costs by having regard to the Employment Court's schedule of time allocations depending on whether a case is assessed as "Band A", "Band B" or "Band C".

[8] Fliways adopted its vaccination policy in extraordinary circumstances, so I agree that the context was "unprecedented". However, Ms Bullen's case involved the application of the well-known and long-standing statutory test for justification in personal grievance claims. There is no reason in this case for the Authority to apply the Employment Court's approach to costs in court proceedings, nor any reason to support an uplift in costs assessed on the basis of the Authority's standard daily tariff approach.

[9] The respondent says that aspects of Ms Bullen's case were misconceived. I agree. Section 110A and s 103(1)(j) of the Employment Relations Act 2000, and s 31, s 61(3)(g) and s 92 of the Health and Safety At Work Act 2015 were not relevant, given the largely undisputed facts. The late attempt to include a claim for a penalty could not succeed.

[10] The submission for the applicant is that she should not be punished for advancing these unsuccessful “causes of action”, said to be neither frivolous or vexatious.

[11] These various “causes of action” added little to the time necessary to investigate Ms Bullen’s personal grievance. Although misconceived, the claims were not unconnected with Fliway’s decision to dismiss Ms Bullen. I agree that reducing costs because these “causes of action” were unsuccessful would be inconsistent with the principle that costs follow the event.

[12] Costs of \$6,250.00 with an additional \$71.55 to cover the Authority lodgement fee is appropriate.

**Order**

[13] Fliway Transport Limited is to pay Linda Jane Bullen costs of \$6,321.55.

Philip Cheyne  
Member of the Employment Relations Authority