

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 769  
3337080

BETWEEN

JOHN BUTLER  
Applicant

AND

ECOPOD CONCEPTS LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Natalie Tabb, counsel for the Applicant  
Garry Pollak, counsel for the Respondent

Submissions received: 23 November 2025 from the Applicant  
5 November 2025 from the Respondent

Determination: 27 November 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 21 October 2025 (Determination [2025] NZERA 665) the Applicant, John Butler, was determined not to have been unjustifiably dismissed or unjustifiably disadvantaged by the Respondent, Ecopod Concepts Limited (Ecopod).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and Ecopod has filed submissions in support of an application for a contribution to costs.

[3] The matter involved a two day investigation meeting.

[4] Mr Pollak on behalf of Ecopod, is claiming a contribution to costs in the sum of \$8,000.00, being the normal daily tariff in the Authority for a two day investigation.

[5] Ms Tabb, on behalf of Mr Butler, is claiming that either costs be stayed pending the outcome of the challenge before the Employment Court, or alternatively either that costs lie where they fall or are set at a modest rate.

[6] Ms Tabb submits that Mr Butler is of limited financial means, he and his family, do not own a home, and have little or no savings. No supporting documentation has been submitted

in support of this submission but I accept this as Mr Burler's sworn evidence during the Investigation Meeting.

### *Principles*

[7] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

#### **15 Power to award costs**

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

### **Costs Award**

[8] Ecopod was the successful party and costs normally follow the event.

[9] Although the Applicant states that it has challenged determination [2025] NZERA 665, in accordance with s 180 of the Act:

The making of an election under section 179 does not operate as a stay of proceedings on the determination of the Authority unless the Court, or the Authority, so orders.

[10] The Authority's practice is not to stay a determination on reserved costs pending the progress of a challenge. I do not consider there are grounds for doing so in this case.

[11] The principles the Authority applies in respect of costs are well-settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>1</sup>. The principles include that costs are discretionary and awards made are consistent with the Authority's equity and good conscience jurisdiction.; they generally follow the event, and will be modest and reasonable.

[12] It has been submitted on behalf of Mr Butler that costs will be a hardship to him. It is not appropriate for the Authority to impose hardship upon an unsuccessful party to proceedings. However I note the observation of Judge Inglis that:

... the fact that a costs award would impose undue financial hardship on an unsuccessful litigant is not, in my view, decisive. Even accepting that in this jurisdiction an unsuccessful party's current financial position is relevant to an assessment of costs, like other considerations it must be weighed in the exercise of the Court's discretion. The interests of both parties, and broader public policy considerations, must also be taken into account.<sup>2</sup>

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<sup>1</sup>*PBO v Da Cruz* [2005] 1 ERNZ 808

<sup>2</sup>*Tomo v Chekmate Precision Cutting Tools Ltf* [2015]EmpC 2 at [22]

[13] Having weighed all these considerations, I find that whilst Ecopod as the successful party is entitled to an award of costs and is claiming costs at no more than the nominal tariff rate, this is a case in which it is appropriate for the Authority to use its discretion by making an award that also recognises the financial hardship making an award of costs at the level submitted by Ecopod would mean for Mr Butler.

[14] Mr Butler is ordered to pay Ecopod the sum of \$4,000.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[15] It may be that Ecopod is willing for Mr Butler to make payment by instalments. Leave is reserved for the parties to revert to the Authority for future orders if such arrangements are agreed and not adhered to.

[16] **I order Mr Butler to pay Ecopod Concepts Limited the sum of \$4,000.00 as costs.**

Eleanor Robinson  
Member of the Employment Relations Authority