

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 714
3275139

BETWEEN MILTON CANALES
 Applicant

AND THERMASHIELD LIMITED
 Respondent

Member of Authority: Rowan Anderson

Representatives: Paul Matthews, advocate for the Applicant
 Michael Leggat, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and other Up to and including 9 October 2025
information received:

Determination: 7 November 2025

COSTS DETERMINATION OF THE AUTHORITY

Background and submissions

[1] On 26 August 2025 the Authority issued a determination¹ in which it was found that Mr Canales had been unjustifiably dismissed from his employment. Remedies were awarded, with a 20 percent reduction on account of contribution.

[2] Costs were reserved. The parties have not been able to agree on costs, and Mr Canales now asks the Authority for orders as to the costs he incurred in pursuing his claims against Thermashield Limited (Thermashield).

[3] Mr Canales seeks a total contribution towards his costs in the sum of \$5,374 in addition to reimbursement of the filing fee. This is said to be based on the daily tariff

¹ *Milton Canales v Thermashield Limited* [2025] NZERA 522.

for a single day investigation meeting plus 0.25 days relating to the preparation of written submissions.

[4] Thermashield does not oppose an award of costs but maintains that the appropriate starting point is \$4,500 based on a single day being required for the investigation meeting. It contends that a 20 percent reduction should be applied having regard to the finding of contribution in the substantive determination. Thermashield, in submissions as to the proposed reduction, also referred to what was said to be poor presentation of the hearing bundle.

Costs principles

[5] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.²

[6] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that *Calderbank* offers may be taken into account, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.³

[7] The daily tariff is usually taken as a starting point,⁴ although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

Consideration

[8] Mr Canales was successful in pursuing his claims and it is appropriate that costs follow the event.

[9] The daily tariff would see a contribution of \$4,500 for the full in-person day. While submissions were lodged after the investigation meeting, I conclude that any additional work was minimal and that most if not all of the relevant work involved was produced in preparation for what was a single day investigation meeting. I am satisfied that the appropriate starting point is \$4,500.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

⁴ Employment Relations Authority Practice Direction, August 2023, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>

[10] While a reduction on account of contribution was made in relation to the remedies awarded, I do not consider the finding of contribution is relevant to the issue of costs. Nor do I consider a reduction should be made on account of what was submitted to be poor preparation of the bundle. Even if I had found that there was some degree of inconvenience caused, I would not have considered a reduction appropriate having regard to the time set aside and taken for the investigation meeting. I am not satisfied there is a sufficient basis for a reduction to the sum allowed based on the daily tariff.

[11] Mr Canales is entitled to reimbursement of the \$71.55 filing fee having been successful in pursuing his claims.

Orders

[12] I order Thermashield Limited to pay Mr Canales, within 28 days, the sum of \$4,500, and an additional \$71.55 as reimbursement of the filing fee, as a contribution towards the costs he incurred in pursuing his claims.

Rowan Anderson
Member of the Employment Relations Authority