

**NOTE: This determination contains an interim non-publication order prohibiting publication of certain information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 776  
3307720

BETWEEN DNL  
Applicant

AND HEALTH AND DISABILITY  
COMMISSIONER  
Respondent

Member of Authority: Sarah Blick

Representatives: DNL, in person  
Matthew McGoldrick, counsel for the respondent

Investigation Meeting: On the papers

Information and submissions received: 24 October and 20 November 2025 from the applicant  
10 September and 20 November 2025 from the respondent

Determination: 1 December 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 13 August 2025 the Authority issued a determination finding DNL had not established unjustified disadvantage grievances in relation to her employment with the Health and Disability Commissioner (HDC).<sup>1</sup>

[2] The parties were given an opportunity to resolve the issue of costs between them, which has not been possible. HDC has applied for costs at the daily tariff amount

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<sup>1</sup> *DNL v Health and Disability Commissioner* [2025] NZERA 488.

for a one-day investigation meeting. DNL requests to pay \$500 in costs by way of instalment payments.

[3] Having received costs submissions from both parties, they are now determined on the papers.

### **Non-publication orders**

[4] DNL sought permanent non-publication orders in respect of her name based largely on health reasons.

[5] In its earlier determination the Authority made an interim order that DNL's name and identifying particulars are prohibited from publication, on the grounds the parties' employment relationship had recently ended and an employment relationship problem would be pursued in relation to it. I was satisfied that an interim non-publication order should be made at that stage, which would give the parties the best chance at resolving matters at further mediation. That order was to lapse 14 days after the date of the parties' next mediation, unless extended or replaced by further order of the Authority, upon application by DNL.

[6] DNL is indeed pursuing further employment relationship problems in the Authority by way of a separate application. The parties have confirmed they have not attended further mediation in respect of those. To continue to give the parties the best chance at resolving those matters at further mediation, the Authority extends its previous interim orders.

[7] DNL's name and identifying particulars are prohibited from publication on an interim basis until further order of the Authority.

### **Costs principles**

[8] The Authority has the power under clause 15 of Schedule 2 of the Employment Relations Act 2000 to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience is to be considered on a case by case basis.

- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.

## **Discussion**

[9] HDC says DNL's claim lacked merit and it was entirely successful, it incurred substantial costs (as a public sector entity), and HDC is therefore entitled to recovery. HDC says there are no reasons which justify a departure from the ordinary application of the daily tariff. Counsel for HDC has confirmed it has incurred total legal fees well in excess of the daily tariff in relation to the Authority investigation.

[10] HDC was wholly successful in defending DNL's claims. Costs should follow that event.

[11] A full day investigation meeting was held with submissions received within the day. The appropriate starting point is the daily tariff of \$4,500.

[12] HDC has not sought an uplift in costs from the daily tariff. I also see no basis for an uplift in costs.

[13] I do find a basis to decrease costs for reasons of financial hardship. DNL has provided a brief affidavit which says she lost her job with HDC in early August 2025, has not been able to find alternative work, is now struggling financially with outstanding bills to pay and has relied on financial assistance from family overseas. Annexed to her affidavit is advice of two overdue bills and reference to DNL's medical situation. Although I am satisfied a reduction is appropriate in the circumstances, I do not consider it to be in the overall interests of justice to essentially eliminate DNL's costs liability to the amount she seeks. An award of \$3,500 reflects the interests of both parties.

[14] No submissions were received from either party about whether the Authority can make an order for costs payments to be made by instalments, and the issue appears

to remain unsettled at least in respect of the Employment Court's jurisdiction.<sup>2</sup> In any event, I would not make an order that would need to be in effect for the significant period of time DNL would be seeking. The parties may be able to agree a payment arrangement, but that is left to them. It will be for HDC to consider what is the most pragmatic way of recovering what is owed to it.

### **Outcome**

[15] DNL is ordered to pay the Health and Disability Commissioner \$3,500 as a contribution towards its legal costs.

Sarah Blick  
Member of the Employment Relations Authority

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<sup>2</sup> *Bowen v Bank of New Zealand* [2023] NZEmpC 220.