

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 759  
3345240

BETWEEN                      LORRAINE  
   KAPURUBANDARAGE  
   DON  
   Applicant

AND                              APPROACH ARCHITECTS  
   LIMITED  
   Respondent

Member of Authority:      Helen van Druten

Representatives:            Hayley Johnson for the Applicant  
   Simon Liu as the Respondent

Submissions received:      17 October 2025 from the Applicant  
   Up to 10 November 2025 from the Respondent

Determination:              25 November 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     By way of a Determination of 6 August 2025, the Authority found that Ms Lorraine Kapurubandarage Don was unjustifiably dismissed and Approach Architects Limited (Approach) was ordered to pay Ms Kapurubandarage Don compensation pursuant to s 123(1)(c)(i) and of the Employment Relations Act 2000 (the Act) and other wage and leave entitlements.<sup>1</sup>

[2]     Costs were reserved for the parties to negotiate but no agreement was reached. The investigation meeting of one day on 5 May 2025 was conducted in person and both parties attended.

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<sup>1</sup> *Kapurubandarage Don v Approach Architects Ltd* [2025] NZERA 481.

## **Cost application and submissions**

[3] In a concise email of 17 October 2025, Ms Kapurubandarage Don's representative sought costs of \$4,500 and the Authority filing fee as per the Authority's normal daily tariff approach.<sup>2</sup>

[4] Based on the evidence provided, I am satisfied that costs in excess of twice the daily tariff were incurred.

[5] Mr Liu submitted that no contribution to payment should be ordered as Ms Kapurubandarage Don chose to engage legal representation whereas Approach did not do so in order to minimise costs. He further submits that her claims were only partially upheld so the costs claimed are disproportionate to her success and Approach cannot afford to make payment. Mr Liu maintains that Approach acted in good faith and did not intend to disadvantage Ms Kapurubandarage Don.

## **Assessment**

### *The Authority's costs approach*

[6] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. In directions issued on 21 March 2025, both parties were advised of the power to award costs, the current tariff for a one-day investigation meeting and the Authority's overall costs approach.

### *Costs for Ms Kapurubandarage Don*

[7] A starting point is that costs normally follow the event and as Ms Kapurubandarage Don was successful in her personal grievance and obtained a compensatory remedy, an award of costs is appropriate.

[8] As Mr Liu submitted, Ms Kapurubandarage Don had mixed success in her grievance claims. Despite that mixed success, the Employment Court in *William Coomer v JA McCallum and Son Limited* decided that any success for an applicant is sufficient success for the purposes of costs; it does not matter that an applicant may have lost a significantly larger or more complex claim if it was successful with any

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<sup>2</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)

claim.<sup>3</sup> Whilst mixed success does not disentitle an applicant's right to be awarded costs it can, in some circumstances, mean that the amount of costs should be reduced.

#### *Applying the daily rate*

[9] The Authority's general approach is to apply a notional daily rate and only adjust that rate if persuaded that circumstances or other factors require an upward or downward adjustment. The current full daily rate is \$4,500 for the first day of an investigation meeting.

[10] In this matter, I consider that Ms Kapurubandage Don's success was more than minor and her costs incurred were significantly more than the daily tariff.

#### *Adjusting the daily rate*

[11] The investigation meeting took a full day and both parties fully participated in the investigation meeting. In all the circumstances, I consider that the daily rate should apply and no adjustment is required.

### **Conclusion**

[12] The Authority recognises Ms Kapurubandage Don's openness to payment by instalments and equally Approach's hesitancy to communicate further with Ms Kapurubandage Don's representative on this matter.

[13] Therefore, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, I order Approach Architects Limited to pay Ms Kapurubandage Don a contribution to her legal costs of \$4,500 and reimbursement of \$71.55 as the Authority filing fee.

[14] Unless the parties agree on alternative payment arrangements prior to the first due date for payment, these costs are to be paid in two equal monthly instalments on 1 December 2025 and 1 January 2026.

Helen van Druten  
Member of the Employment Relations Authority

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<sup>3</sup> *William Coomer v JA McCallum & Son Ltd* [2017] NZEmpC 156.