

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 416  
3297180

BETWEEN

SHAUNA DWYER  
Applicant

AND

OAKVUE BLOODSTOCK  
LIMITED  
Respondent

Member of Authority: Shane Kinley

Representatives: Alex Kersjes, advocate for the applicant  
Tom Jarman, counsel for the respondent

Investigation Meeting: On the papers

Submissions: Up to 18 June 2025

Determination: 15 July 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] In a determination dated 07 May 2025 I found Shauna Dwyer had established she was unjustifiably disadvantaged in her employment with Oakvue Bloodstock Limited (OBL) in relation to inappropriate communication from Robert (Ralph) Manning, sole Director and shareholder of OBL.<sup>1</sup> Other claims by Ms Dwyer that she was unjustifiably constructively dismissed by OBL, sexually harassed or otherwise unjustifiably disadvantaged in her employment with OBL, and claims OBL breached its duty of good faith (under s 4 of the Employment Relations Act 2000 (the Act)) were not established.<sup>2</sup>

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<sup>1</sup> *Shauna Dwyer v Oakvue Bloodstock Limited* [2025] NZERA 251 at [55].

<sup>2</sup> *Ibid* at [34], [39] and [77].

[2] I ordered OBL to pay Ms Dwyer \$10,000 in compensation under s 123(1)(c)(i) of the Act.<sup>3</sup>

[3] Costs were reserved in the hope the parties would be able to settle this issue between themselves.<sup>4</sup> Unfortunately, they have been unable to do so, and Ms Dwyer now seeks costs. The investigation meeting for this matter finished mid-afternoon. I indicate my preliminary view is the notional daily rate for one day was the appropriate starting point for a determination of costs.<sup>5</sup>

### **Contribution to Costs**

[4] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Act. The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.<sup>6</sup> The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[5] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*<sup>7</sup> as confirmed in *Fagotti v Acme and Co Limited*.<sup>8</sup> The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful party's conduct.

### *Submissions*

[6] Ms Dwyer sought an order for costs based on the daily tariff for one day, being \$4,500.00, plus disbursements. Ms Dwyer referred to an offer to resolve the matter being made well in advance of the investigation meeting, however, no evidence was made to support this. No uplift in costs was sought from the daily tariff nor were any matters referred to which would warrant a potential reduction in costs below the daily

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<sup>3</sup> Ibid at [91].

<sup>4</sup> Ibid at [94].

<sup>5</sup> Ibid at [97].

<sup>6</sup> For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

<sup>7</sup> [2005] 1 ERNZ 808.

<sup>8</sup> [2015] NZEmpC 135 at 114.

tariff. An invoice of costs charged to Ms Dwyer was provided, showing actual costs invoiced exceeded the amount sought.

[7] OBL said Ms Dwyer had only been partially successful, in “the most minor of her three claims” and it was appropriate to reduce the costs awarded from the notional daily tariff to reflect this. OBL referred to another determination of mine where I reduced the notional daily tariff by 50% in a case of partial success where the applicant was also found to be unjustifiably disadvantaged.<sup>9</sup> OBL says Ms Dwyer was less successful than the applicant in that case and submitted a reduction of 75% from the notional daily tariff, bringing the award of costs to \$1,125.

### *Analysis*

[8] I consider Ms Dwyer is entitled to recover a reasonable contribution to the legal costs she incurred.

[9] The Employment Court in *Coomer v JA McCallum and Son Limited* said any success for an applicant is sufficient success for the purposes of costs<sup>10</sup>, including observing “it was appropriate to consider costs in this case by standing back and looking at things “in the round” and, in doing so, to conclude there had been mixed success”.<sup>11</sup> The Court’s approach in *Coomer* was “to adopt the tariff in the Authority, but to reduce it to reflect the measure of success McCallum & Son had”.<sup>12</sup>

[10] While I accept Ms Dwyer was not successful on all her claims, she was successful in relation to one element of her unjustified disadvantage claim. Her success, albeit limited, could not have been achieved without filing a case in the Authority.

[11] Standing back and looking at things “in the round”, as that success was only partial, I consider a downward adjustment to the daily tariff is justified and find a one-half reduction to the daily tariff is appropriate.

[12] While Ms Dwyer’s success could be viewed as less significant than in other cases, I am not convinced it was so limited that the greater reduction proposed by OBL is warranted.

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<sup>9</sup> *FTT v Sinclair Pryor Motors Limited* [2025] NZERA 250 at [15].

<sup>10</sup> *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156 at [42].

<sup>11</sup> *Ibid* at [43].

<sup>12</sup> *Ibid* at [45].

**Order**

[13] Oakvue Bloodstock Limited is ordered to pay Shauna Dwyer within 28 days of the date of this determination the sum of \$2,250 as a contribution to costs and to reimburse the filing fee of \$71.55.

Shane Kinley  
Member of the Employment Relations Authority