

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 540
3310501

BETWEEN KYLAH HARRIS
Applicant

AND IAN DAVID WILLIAMS
Respondent

Member of Authority: Natasha Szeto

Representatives: Steph Dyhrberg, counsel for the Applicant
Keith Jeffries, counsel for the Respondent

Submissions received: 11 July 2025 from the Applicant and
18 July 2025 from the Respondent

Date: 29 August 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 13 June 2025, I issued a determination¹ in which I found Ms Harris was owed annual holiday pay arrears of \$368.00 (gross) plus interest and I ordered Mr Williams to pay the arrears and interest as well as a penalty of \$6,200.00 in relation to four breaches of legislation. I found Ms Harris was not entitled to be paid two weeks' notice at the end of her employment.

[2] In the determination, I referred to the Authority's usual practice of applying the daily tariff to determine costs and the parties were encouraged to resolve any issue of costs between them. They have been unable to do so, and this determination accordingly resolves the issue of costs.

¹ *Kylah Harris v Ian David Williams* [2025] NZERA 332.

Parties' submissions

[3] Ms Harris lodged and served a submission for costs on 11 July 2025. She asks the Authority to award her \$10,000.00 as a fair and reasonable contribution to her incurred costs of \$12,000.00 plus GST. Ms Harris says that claims were defended without evidential basis and no meaningful defence to the breaches has been provided to justify the long and drawn out process. Ms Harris also says she tried numerous times to settle the claims, including making a *Calderbank* offer. Overall, Ms Harris says Mr Williams' lack of engagement has resulted in delays and increased her costs.

[4] Mr Williams filed a submission as to costs on 18 July 2025. He says an uplift would be "wholly inappropriate" because there was a meaningful defence and a conflict in the evidence about relevant events. Mr Williams agrees there were numerous early requests to settle and an exchange of correspondence, but the offers were not accepted because they were not realistic or reasonable. Mr Williams says he was not responsible for any delays.

Analysis

[5] The Authority has clear statutory power to order such costs and expenses to be paid as the Authority thinks reasonable.² Costs are awarded at the Authority's discretion.³ The principle that costs follow the event is well-recognised by the Authority and courts.⁴

[6] In this case, Ms Harris was successful in relation to her claims for holiday pay arrears and penalties. She is entitled to an award of costs.

[7] The Authority has adopted a daily tariff approach as the starting point for considering costs, which is well known. The current daily tariff is \$4,500.00 for the first day of hearing.⁵ The parties can expect the Authority to adhere to the approach of applying the daily tariff, unless there is good reason to depart from it. In this case, the investigation meeting ran for just under three quarters of a full day. I proceed on the

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

³ *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622.

⁴ *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [48].

⁵ For further information about the factors considered in assessing costs see:

www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

basis that the appropriate starting point is \$4,500.00 which acknowledges the time taken to prepare for a full day's investigation.

[8] 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*⁶ as confirmed in *Fagotti v Acme and Co Limited*⁷.

[9] It is a principle set out in *Da Cruz* that costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct. The financial situation of the party paying costs can be a relevant factor to take into account. Awards made should be modest, and consistent with the Authority's equity and good conscience jurisdiction. A robust approach is to be adopted in relation to *Calderbank* offers. The Employment Court has noted that such an approach is "consistent with the public interest in encouraging the acceptance of reasonable settlement offers and avoiding unnecessary litigation".⁸

[10] The two main reasons Ms Harris says an uplift is justified is the existence of the *Calderbank* offer and that Mr Williams' conduct unnecessarily delayed the resolution of the matter.

[11] I have seen the *Calderbank* offer made by Ms Harris. The offer was made on 19 June 2024 which was well in advance of the investigation meeting on 18 March 2025. The difficulty with assessing the impact of the *Calderbank* is that there is one global amount claimed for costs even though there were claims in a different jurisdiction and potential claims against an additional respondent at that time. I am therefore unable to conclude whether the *Calderbank* was reasonable in respect of the specific claims before the Authority. However, Mr Williams accepts that Ms Harris made multiple offers to "settle" and there is no evidence that Mr Williams engaged with this process. I consider a small uplift to tariff of 10 percent is appropriate to recognise Ms Harris' attempts to resolve matters before the Authority, including the *Calderbank* offer.

[12] In terms of conduct, I consider Mr Williams made appropriate concessions in relation to Ms Harris' holiday pay and interest claims. I accept Mr Williams'

⁶ [2005] 1 ERNZ 808.

⁷ [2015] NZEmpC 135 at 114.

⁸ *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4.

submission there was a conflict in the evidence and he was entitled to run a defence to Ms Harris' claims. Overall, I am not persuaded the evidence shows that Mr Williams' conduct unnecessarily delayed the resolution of Ms Harris' claims, such that an uplift to the tariff is justified on this basis.

[13] Stepping back to look at matters overall and considering parity with other cases, an award of \$4,950.00 as a contribution to Ms Harris' costs actually and reasonably incurred represents a modest and appropriate costs award in the circumstances and I make that award. Ms Harris should also be reimbursed the Authority's application fee.

Orders

[14] For the reasons set out above, I order Ian David Williams to pay Kylah Harris within 28 days of the date of this determination:

- (a) The sum of \$4,950.00 as a contribution to her costs.
- (b) The sum of \$71.55 as a disbursement, being the Authority's filing fee.

Natasha Szeto
Member of the Employment Relations Authority