

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 751  
3314100

BETWEEN	MARLIES HIEMER Applicant
AND	STYLE CLUB NZ LIMITED Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Kara Orviss, advocate for the Applicant  
Michael Smyth, counsel for the Respondent

Submissions received: 6 October 2025 from the Applicant  
16 September 2025 from the Respondent

Date of determination: 19 November 2025

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] Ms Hiemer was unsuccessful with her personal grievance claims. The Authority found in the determination dated 19 August 2025 she was not a person intending to work.<sup>1</sup> The Authority as a consequence had no jurisdiction to consider Ms Hiemer's claims.

[2] The Authority reserved the issue of costs and the parties were encouraged to resolve the costs between themselves but have been unable to do so and ask the Authority to determine costs.

---

<sup>1</sup> *Hiemer v Style Club NZ Limited* [2025] NZERA 504.

[3] Costs are a matter of discretion. The main principle in the exercise of the discretion is that costs follow the event. If a party is successful, they will be entitled to an award of costs. Style Club NZ Limited (Style Club) was successful. It consistently maintained the offer of employment was withdrawn before Ms Hiemer accepted it and for that reason it had no obligations towards Ms Hiemer as an employee.

[4] The starting point for costs based on the Authority's daily tariff is \$4,500.00 for the first day. The matter was heard on the papers so a reduction to the starting point is appropriate to recognise that the costs of in person attendance at an investigation meeting were not incurred. From that starting point the Authority can consider whether there are factors justifying an increase or decrease in costs.

### **Submissions**

[5] On Style Club's behalf it is submitted an appropriate starting point is \$2,250.00, being half the daily tariff in recognition of costs being determined on the papers. From there an uplift is sought due to Ms Hiemer rejecting a Calderbank offer, that her claim she was a person intending to work lacked merit and the way the case was conducted increased costs for Style Club.

[6] Style Club's invoices were provided and total costs amounted to \$4,711.28 (plus GST). A copy of the Calderbank offer was submitted and I am satisfied it was a genuine Calderbank offer. It was made on 23 September 2024 but recorded as being to avoid the costs of mediation. Ms Hiemer was, however, informed the offer may be put before the Authority if the matter proceeded to an investigation and she was unsuccessful with her claim or received an award that was not as favourable as the Calderbank offer.

[7] The Calderbank offer that Ms Hiemer rejected was for \$3,000.00 in full and final settlement of her grievances. She was given approximately one month to consider that offer which is a reasonable amount of time. Style Club seeks a uplift for unreasonably rejecting the Calderbank offer and seeks a costs award against Ms Hiemer in the amount of \$4,000.00.

[8] Ms Hiemer seeks an order to have costs lie where they fall. She says her claims were brought in good faith and while ultimately unsuccessful they were not frivolous. Ms Hiemer has also provided a sworn affidavit about her ability to pay. She is on a

Jobseeker Support benefit from Work and Income and has long-term disabilities that require ongoing treatment through ACC. In addition, she has been diagnosed with a mental health condition and says both the mental health and physical conditions are preventing her from being able to work.

### **Analysis**

[9] This is not a case that warrants indemnity or close to indemnity costs. Applicants are entitled to have their matters heard but the reality of that is if they are unsuccessful, costs may be awarded against them. I adopt a starting point of \$1,500.00 which is one third of the daily tariff because the matter was heard on the papers.

[10] A Calderbank offer was made that would have left Ms Hiemer in a far better position. The preparation of an agreed statement of facts and the need to clarify the factual basis for Ms Hiemer's claims meant Style Club incurred additional legal costs because of the extra time involved. An uplift is appropriate, in particular, in relation to the Calderbank offer.

[11] However, I accept Ms Hiemer's financial position and in those circumstances a decrease can also be applied. On balance I consider an award in the amount of \$1,700.00 to be appropriate as a contribution to Style Club's legal costs.

### **Orders**

[12] Marlies Hiemer is ordered to pay Style Club NZ Limited a contribution to legal costs in the amount of \$1,700.00.

Sarah Kennedy - Martin  
Member of the Employment Relations Authority