

**NOTE: This determination contains an order at [1] prohibiting publication of certain information.**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 224  
3254259

BETWEEN                      GAY JOHNSTONE  
   Applicant  
  
AND                                ZXY  
   Respondent

Member of Authority:        Lucia Vincent  
  
Representatives:              Emily Griffin for the Applicant  
   Tim McGinn, counsel for the Respondent  
  
Investigation Meeting:        On the papers  
  
Submissions Received:        14 March 2025 from the Applicant  
   24 March 2025 from the Respondent  
  
Determination:                17 April 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Non-Publication Order**

[1] In *Johnstone v ZXY* [2025] NZERA 11 (the determination) the Authority made an interim non-publication order to preserve the position of ZXY pending any challenge.<sup>1</sup> ZXY has challenged the determination. Therefore, the interim non-publication order remains in place in relation to the organisation's name until the outcome of the challenge is known, and any order by the Court made.

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<sup>1</sup> At [9].

## **Determination**

[2] In the determination the Authority found that ZXY had unjustifiably dismissed Ms Johnstone.<sup>2</sup> The Authority reserved the issue of costs, encouraging the parties to resolve any cost issues between them.<sup>3</sup> They have been unable to and have asked the Authority to do so.

## **Cost principles**

[3] Clause 15 of Schedule 2 of the Employment Relations Act 2000 (Act) gives the Authority discretion to order any party to a matter to pay to another party such costs and expenses as the Authority thinks reasonable.

[4] If unsuccessful, a party will usually have to contribute to the legal costs of the successful party, as well as meeting their own costs.

[5] The daily tariff applied by the Authority sets the starting point from which relevant factors and principles may guide an upward or downward adjustment of the amount of costs awarded. Practice Note 2 for the Authority sets the current tariff for costs at \$4,500 for the first day of any matter.<sup>4</sup>

[6] The Employment Court has endorsed the average daily tariff approach of the Authority and relevant principles governing costs in the Authority.<sup>5</sup> These include considering whether the conduct of the parties increased costs unnecessarily (warranting an adjustment up or down), without compromising the Authority's otherwise modest approach to costs.<sup>6</sup>

## **Submissions**

[7] Ms Johnstone asks for an award of costs totalling \$8,000 for a two-day hearing, based on the tariff system.

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<sup>2</sup> At [88].

<sup>3</sup> At [102].

<sup>4</sup> See: <https://www.era.govt.nz/assets/Uploads/practice-note-2.pdf>.

<sup>5</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [43-47] and *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135 at [108].

<sup>6</sup> *PBO*, above n 4, at [43] to [47].

[8] ZXY accepts costs should follow the event. It says there are no special features that would require a departure from the daily tariff approach, but that any award should reflect that the second day was a half day (not full day).

### **Conclusion on costs**

[9] The investigation meeting took a day and half. I accept it is appropriate to apply the daily tariff: \$4,500 for the first day and \$1,750 for the second day (a half day), totalling \$6,250. I award this amount as costs. I also award an amount of \$71.55 as an expense to reimbursing Ms Johnstone for her filing fee.

### **Orders**

[10] I order ZXY pay Ms Johnstone within 28 days of the date of this costs determination:

- (a) \$6,250 costs; and
- (b) \$71.55 expenses.

Lucia Vincent  
Member of the Employment Relations Authority