

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 573
3280439

BETWEEN

JEROME LAZARO
Applicant

AND

WAIMEA CONTRACT CARRIERS
LIMITED
Respondent

Member of Authority: Peter van Keulen
Representatives: Simon England, counsel for the Respondent
Investigation Meeting: On the papers
Submissions Received: 29 August 2025, from the Respondent
No submissions from the Applicant
Date of Determination: 16 September 2025

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 5 August 2025 I resolved the parties' employment relationship problem in favour of Waimea Contract Carriers Limited (WCC).¹ I determined that WCC did

¹ *Lazaro v Waimea Contract Carriers Limited* [2025] NZERA 472.

not unjustifiably dismiss Jerome Lazaro and that WCC did not fail to provide Mr Lazaro with a safe workplace.

[2] In my determination I reserved costs so that the parties could try to agree costs. The parties have been unable to agree costs and now WCC seeks an order for costs.

Application for costs

[3] WCC seeks an award of costs of \$12,000, applying the daily tariff as follows:²

(a) \$8,000 for a two-day investigation meeting.

(b) An uplift to the daily tariff of \$2,000 per day for additional work arising out of Mr Lazaro's failure to comply with directions made for his evidence and for Mr Lazaro not accepting either of two offers – one open offer made before the start of my investigation meeting and another “Calderbank offer” made between the investigation meeting days.³

[4] Counsel who last acted for Mr Lazaro has advised that he does not have any instructions on the application for costs and Mr Lazaro has now left New Zealand.

Analysis

Costs in the Authority

[5] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the

² The normal practice of the Authority when setting costs is to apply a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff. The current daily tariff is \$4,500 for the first day of an investigation meeting and \$3,500 for every subsequent day of an investigation meeting.

³ An open offer is an offer that is not made on a without prejudice basis – and is therefore not privileged - so it can be referred to be either party in the investigation meeting and/or in any cost application. A Calderbank offer is an offer made by one party to settle the claim on terms. The offer is marked “without prejudice save as to costs”. The purpose of a Calderbank offer is to not only to attempt to settle a claim but by using the stated words the offering party is reserving the right to bring the offer to the Court's (or in this case the Authority's) attention if the claim is not settled. This is so that the offer can be used for assessing costs once the claim has been determined.

Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.⁴

Costs follow the event

[6] The presumption with costs is that costs should follow the event so that a successful party is awarded costs from the other party. In this case WCC was successful, and it is entitled to an award of costs.

Applying the daily tariff

[7] There is no reason to depart from the normal daily tariff approach to assessing costs in the Authority; so, I will calculate the award of costs based on the daily tariff.

[8] The investigation meetings took two days so the starting point for my order for costs is \$8,000.

Adjusting the daily tariff

[9] The question that follows then is whether I should adjust the daily tariff by:

- (a) Increasing for additional work required by Mr Lazaro's failure to meet my directions for lodging evidence.
- (b) Increasing for the two offers made by WCC that were not accepted.

Increase the daily tariff for additional work

[10] On 20 July 2024 I held a case management conference with the parties. In that conference I set this employment relationship problem down for an investigation meeting on 5 November 2024. I also made directions for evidence to be lodged and served – with Mr Lazaro's

⁴ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

evidence due on 27 September 2024. In addition, I subsequently directed Mr Lazaro to quantify the remedies he was seeking.

[11] Mr Lazaro failed to comply with my directions for his evidence and quantification of remedies. This resulted in the investigation meeting being rescheduled to 5 February 2025.

[12] Mr Lazaro's failure to comply with my directions was compounded by his representative, at the time, not updating the Authority or WCC about the reasons for any delay and their ability to proceed with the scheduled investigation meeting.

[13] I accept counsel for WCC's submission that this behaviour (non-compliance with directions and failure to respond to the Authority and WCC about progress of Mr Lazaro's evidence and therefore his readiness to attend the scheduled investigation meeting) caused WCC to incur additional cost. This cost was more than minimal as WCC had to prepare for an investigation meeting proceeding without Mr Lazaro – as this was possible given the failure of Mr Lazaro's representative to update the Authority. This additional work was unnecessary in the end as Mr Lazaro's representative contacted the Authority just before the scheduled investigation meeting and the meeting was rescheduled.

[14] In the circumstances this behaviour by Mr Lazaro and his representative warrants an increase in the daily tariff, and I quantify this at \$500 for each day.

The effect of WCC's offers

[15] One accepted basis for adjusting the daily tariff is where there has been an open offer or Calderbank offer from one party that has been unreasonably rejected by the other and the rejecting party did not achieve a better result than the offer in the subsequent determination.⁵

⁵ The basic premise is that if an unsuccessful applicant rejected an open offer or a Calderbank offer to settle from the respondent and has not been successful in the subsequent determination then the respondent should be awarded an increased amount of costs. The rationale is that continuing with its claims after rejecting the offer was futile and unnecessary because the applicant would have gained more from accepting the offer and would have avoided the ongoing costs for both parties by ending its claims at that time.

[16] WCC made an open offer to Mr Lazaro before the investigation meeting and a Calderbank offer between the two investigation meeting days.⁶ Both offers were for a payment of compensation to settle the employment relationship problem. Mr Lazaro did not accept either offer. And as he was unsuccessful in my determination Mr Lazaro would have been better off he had accepted either offer – and WCC would not have incurred the additional costs.

[17] On this basis it is appropriate to increase the daily tariff, and I quantify this increase at \$1,000 for each day.

Conclusion

[18] WCC was the successful party and is entitled to receive an award of costs. The daily tariff is applied to calculate the quantum of the award with an adjustment for additional work and the refusal to accept either of the offers made by WCC, of \$1,500 per day.

Order

[19] Mr Lazaro is to pay WCC \$11,000 as a contribution to its costs in this matter.

Peter van Keulen
Member of the Employment Relations Authority

⁶ The Calderbank offer was a compliant offer – see *Ogilvie & Mather (NZ) Ltd v. Darroch* [1993] 2 ERNZ 943.