

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 650
3260359

BETWEEN NIKITA LEVI-ADAMS
Applicant

AND DONALD GREENE
Respondent

Member of Authority: Jeremy Lynch

Representatives: Alex Kersjes, advocate for the Applicant
Respondent in person, with Elijah Greene

Submissions Received: 25 September 2025 from the Applicant
26 September and 8 October 2025 from the Respondent

Date of Determination: 16 October 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority issued a determination on 28 August 2025, which found that Nikita Levi-Adams was unjustifiably dismissed by Donald Greene, and awarded her lost wages and compensation.¹

[2] The parties were encouraged to resolve the question of costs but were unable to do so. Ms Levi-Adams has applied to the Authority for an award of costs.

Costs principles

[3] The Authority has power under clause 15 of Schedule 2 of the Employment Relations Act 2000 to award costs. This power is discretionary and must be used in a

¹ *Nikita Levi-Adams v Donald Greene* [2025] NZERA 531.

principled manner.² Principles guiding the Authority's approach to costs include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience are to be considered on a case-by-case basis.
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Frequently, costs are judged against a notional daily tariff.³

[4] Another well settled principle guiding the Authority's approach is that costs awards will be modest.

Ms Levi-Adams' position on costs

[5] Ms Levi Adams seeks a contribution towards her total representation costs incurred of \$15,085.95. Ms Levi-Adams has provided an invoice in support of her costs claim.

[6] Ms Levi-Adams submits that a costs award in the sum of \$7000 is appropriate because:

- she was the successful party, and costs should follow the event.
- The investigation meeting spanned a full day of hearing, meaning the starting point of her costs consideration should be the authority's daily tariff of \$4500.
- A subsequent submissions hearing was held by AVL, requiring further attendance.
- An uplift to the daily tariff of \$2250 should be applied in respect of a *Calderbank* offer declined by Mr Greene.

² *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808, and *Fagotti v Acme and Co Limited* [2015] NZEmpC 135.

³ Employment Relations Authority Te Ratonga Ahumana Taimahi Practice Direction <https://www.era.govt.nz/assets/uploads/practice-direction-ofera>.

- The matter was unnecessarily protracted, with mediation occurring at the end of a full day's investigation meeting, in order that the parties attempt to reach resolution, during which Mr Greene was uncooperative.

Mr Greene's position on costs

[7] Mr Greene provided limited information setting out his financial position. Mr Greene says he has no assets, no savings, and no income. For Mr Greene it was submitted that "Don is a pensioner with no assets to sell... he has no ability to pay..."

[8] Mr Greene also disputes that he was uncooperative in respect of the mediation process. Mr Greene submits that he used his best endeavours to come to a "realistic agreement" with Ms Levi-Adams.

Costs analysis

Starting point

[9] As Ms Levi-Adams was the successful party in the substantive matter, she is entitled to a consideration of costs.

[10] The starting point for a consideration of costs is therefore \$4,500.00, being one full day of the Authority's notional daily tariff, before any upward or downward adjustment.

Attempts to resolve

[11] At the conclusion of the evidence (but prior to the parties' submissions) during the investigation meeting held in November 2024, the parties sought an adjournment in order that settlement discussions take place. The Authority adjourned the meeting, and advised the parties that if settlement could not be reached, a further investigation meeting would be scheduled, for the purpose of hearing the parties' submissions.

[12] The Authority arranged for an employment mediator from MBIE to assist the parties. The mediator then advised that further information was required in order to progress settlement talks, and he had released the parties in order that the required information could be obtained.

[13] Over the following months, the Authority made regular progress enquiries of the mediator, who advised he remained hopeful that a resolution would be reached.

However, in June 2025 the mediator advised the Authority that despite his best efforts, no settlement could be reached, and the mediation file was to be closed.

[14] The Authority then convened a further investigation meeting, held on 13 August 2025, for the parties to provide their closing submissions.

Ms Levi-Adams' settlement offer

[15] A *Calderbank* offer (that is, a without prejudice save as to costs offer) was made on Ms Levi-Adams' behalf on 15 November 2024. This offered to settle the matter for an amount lower than the total remedies ultimately awarded to Ms Levi-Adams. Ms Levi-Adams' letter highlights to Mr Green, the potential remedies that may be awarded "if the matter proceeds to the Authority".

[16] The difficulty with this position, is that by the time Ms Levi-Adams' *Calderbank* offer was made, the Authority's substantive investigation had already occurred. The parties' witness statements and supporting documents had been lodged, and an in-person investigation meeting had been held on 13 November 2024.

[17] The purpose of a *Calderbank* offer is to settle the matter without the need for litigation. Generally a *Calderbank* offer is made prior to the parties being put to the time and expense of preparing for and attending the litigation.

[18] That did not occur in the circumstances of this matter. Ms Levi-Adams' *Calderbank* offer was made after the Authority's investigation meeting had concluded, by which stage the majority of Ms Levi-Adams' costs would likely have been incurred.

[19] As such there is no increase to the daily tariff in respect of Mr Greene's rejection of Ms Levi-Adams' *Calderbank* offer.

Conduct

[20] There is no evidence that the conduct of either party unreasonably increased the costs of the other party.

Adjustment to the tariff

[21] The daily tariff can be adjusted for relevant factors. Stepping back to look at matters overall, it is reasonable in the circumstances of this case that there is no adjustment to the daily tariff.

[22] The November 2024 investigation meeting was concluded by approximately 3.30 pm. The resumption investigation meeting, held by AVL in August 2025, commenced at 10.15 am,⁴ and concluded by 11.15 am.

[23] Although Ms Levi-Adams submits this required further preparation, attendance and cost, I am not persuaded that this warrants an uplift to the tariff.

[24] The November 2024 investigation did not take a full day of hearing. Rather, it finished early. This was because both parties agreed to discuss settlement, with the assistance of a mediator.

[25] I consider that an award of one full day at the daily tariff rate is fair and appropriate. Such an award reflects that Ms Levi-Adams was the successful party. It also acknowledges that despite requiring a second (non-consecutive) submissions-only investigation meeting, overall the investigation was concluded in the equivalent of one full day of hearing time.

[26] It is also appropriate that Ms Levi-Adams is reimbursed for the cost of the fee she paid to lodge her application in the Authority.

Orders

[27] Within 28 days of the date of this determination, Donald Greene is ordered to pay to Nikita Levi-Adams:

- (a) \$4,500.00 as a contribution to her costs; and
- (b) \$71.55 for the Authority's lodgement fee.

Jeremy Lynch
Member of the Employment Relations Authority

⁴ The investigation meeting was scheduled to commence at 10.00 am, but due to technical difficulties Mr Greene was unable to attend at this time. The Authority delayed the start time until 10.15 am in order that Mr Greene could overcome his technical difficulties and attend the meeting.