

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 209  
3286559

BETWEEN REIHANA MACGREGOR  
Applicant

AND SOUTHERN FENCING LIMITED  
Respondent

Member of Authority: Peter van Keulen

Representatives: Alex Kersjes, advocate for the Applicant  
Michael Andrews for the Respondent

Investigation Meeting: On the papers

Submissions Received: 13 March 2025 from the Applicant  
27 March 2025 from the Respondent

Date of Determination: 14 April 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1] In a determination dated 13 February 2025,<sup>1</sup> I found that Southern Fencing Limited had not unjustifiably dismissed Reihana Macgregor but Southern Fencing had failed to have an employment agreement for Mr Macgregor. I ordered Southern Fencing to pay a penalty to Mr Macgregor of \$1,500.

[2] In my determination I reserved costs so that the parties could try to agree costs. The parties have not agreed costs and now Mr Macgregor seeks costs.

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<sup>1</sup> *Reihana Macgregor v Southern Fencing Limited* [2025] NZERA 65.

## **Application for costs**

[3] Mr Macgregor seeks an award of costs of \$4,500 together with \$71.56 for the lodgement fee. Mr Macgregor seeks this amount based on the application of the daily tariff, with an uplift for written submissions and conduct by Southern Fencing that he says increased his costs.

[4] Southern Fencing says Mr Macgregor should not be awarded any costs because he failed in his unjustifiable dismissal claim, i.e., he was not successful.

## **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 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.<sup>2</sup>

### *Costs follow the event*

[6] The presumption with costs is that costs should follow the event; that is the successful party should be awarded costs from the other party. In this case Mr Macgregor was successful with part of his employment relationship problem – albeit a small part of that problem - so he should be awarded costs unless there is some reason to depart from this practice.

### *Mixed success*

[7] Southern Fencing says that there has been no success for Mr Macgregor as his primary claim was unjustified dismissal.

[8] Southern Fencing's position fails to recognise that Mr Macgregor was successful with the employment agreement aspect of his employment relationship problem. And, as stated by

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<sup>2</sup> For further information about the factors considered in assessing costs, see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).

the employment Court in *William Coomer v JA McCallum and Son Limited*,<sup>3</sup> any success for an applicant is sufficient success for the purposes of costs; it does not matter that an applicant may have lost a significantly larger or more complex part of the employment relationship problem.

[9] Applying the principle here, there is no reason to change the initial position. Mr Macgregor was successful in one part of his employment relationship problem and is entitled to an award of costs.

#### *Applying the daily tariff*

[10] 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.

[11] 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.

[12] There is no reason to depart from this normal approach so I will calculate the award of costs based on the daily tariff.

[13] The investigation meeting for this matter took less than half a day so the starting point for any costs award is \$2,250.

#### *Adjusting the daily tariff for mixed success*

[14] Whilst mixed success does not disentitle an applicant's right to be awarded costs it can, in some circumstances, mean that the amount of costs should be reduced.

[15] In this case Mr Macgregor's employment relationship problem had two distinct parts - unjustifiable dismissal and failure to provide an employment agreement. The second aspect is sufficiently different from the first part and sufficiently less significant in terms of remedies to mean that Mr Macgregor's success is correctly assessed as limited. And, being less successful overall justifies a reduction in the daily tariff.

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<sup>3</sup> *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

[16] In this case I conclude that an appropriate reduction is \$750.

*Adjusting the daily tariff for written submissions*

[17] Mr Macgregor has asked for an uplift to the award of costs on the basis that written submissions were required after the investigation meeting.

[18] Submissions are part of an investigation meeting; whether they are made in that meeting or after in writing is factored into the daily tariff. To increase the amount of costs based on submissions there would need to be some factor to those submissions that increased the cost – requiring them to be in writing is not, on its own, enough.

[19] I am not satisfied that there was additional work imposed on Mr Macgregor's advocate because of the submissions being required in writing after the investigation meeting.

*Adjusting the daily tariff for Southern Fencing's conduct*

[20] Southern Fencing failed to engage properly in the dispute resolution process for the employment relationship problem. Mr Macgregor says he lost the opportunity to try and resolve the problem before engaging in the Authority process.

[21] Whilst this is unacceptable, in this case it does not present a basis for an increase in the daily tariff as Southern Fencing's conduct did not increase the time required in the investigation meeting.

*Conclusion*

[22] Mr Macgregor was the successful party and is entitled to receive an award of costs. The daily tariff should be applied to calculate the quantum of the award but subject to a reduction of \$750. This means Mr Macgregor is entitled to an award of costs of \$1,500.

[23] Mr Macgregor is also entitled to \$71.55 for the filing fee.

## **Order**

[24] Southern Fencing Limited is to pay Reihana Macgregor \$1,500 as a contribution to his costs in this matter. Southern Fencing Limited must also pay Reihana Macgregor \$71.55 for the filing fee.

Peter van Keulen  
Member of the Employment Relations Authority