IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2025] NZERA 564
3300801

	BETWEEN	ANESH NARSINH Applicant
	AND	SWIFT ROOFING LIMITED Respondent

Member of Authority:	Helen van Druten
Representatives:	Alex Kersjes, advocate for the Applicant Bryan Easton, counsel for the Respondent
Costs Submissions:	15 August 2025 from the Applicant 29 August 2025 from the Respondent
Investigation Meeting:	24 April 2025 at Auckland
Determination:	11 September 2025

COSTS DETERMINATION OF THE AUTHORITY

Substantive determination

[1] In a determination of 18 July 2025, Swift Roofing Ltd (Swift) was ordered to pay a penalty of $1,000 for a breach of s 65 of the Employment Relations Act 2000 (the Act).[1] Mr Narsinh's grievances raised for unjustified dismissal, unjustified disadvantage by way of suspension and claim for a breach of s 4 of the Act were unsuccessful.

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately, they have been unable to do so, and Mr Narsinh has filed a submission in support of a costs application.

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[1] *Narsinh v Swift Roofing Limited* [2025] NZERA 431.

The application for costs

[3] In a concise memorandum of 15 August 2025, Mr Kersjes, as advocate for Mr Narsinh, submits that despite having mixed success and not obtaining an order in their favour for the predominant unjustified dismissal claim, a contribution to costs of $4,500.00 plus $200 disbursements and the Authority filing fee should be awarded.

[4] Mr Kersjes further submits that this is under half of the total legal costs and reflects a 25 percent discount to reflect the mixed success of the parties.[2] He further says that no travel or "pre-mediation" costs were included in the total calculation.

[5] Swift submitted that the only matter which Mr Narsinh succeeded in was for the imposition of a penalty for failing to provide a draft employment agreement. Swift acknowledged from the outset that it did not provide an employment agreement to Mr Narsinh and there was no evidential contest about this. Further, if this was the only claim raised by Mr Narsinh, this would not have required preparation of evidence, an investigation meeting or submissions.

[6] Mr Easton, as counsel for Swift, raised the issue relating to late presentation of information relating to Mr Narsinh's claim for lost wages.

Assessment

The Authority's costs approach

[7] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*[3] that costs are modest and that they normally follow the event.

[8] Although the Applicant has challenged determination [2025] NZERA 451, in accordance with s 180 of the Act, the making of an election under section 179 does not operate as a stay of proceedings on the determination of the Authority unless the Court, or the Authority, so orders.

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[2] *William Coomer v JA McCallum & Son Ltd* [2017] NZEmpC 156.
[3] *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

[9] The Authority's practice is not to stay a determination on reserved costs pending the progress of a challenge.

Mixed success

[10] The issue raised here is that both parties can claim success. Mr Narsinh only succeeded in one of his uncontested claims and Swift Roofing Ltd was successful in defending the other contested claims. Before venturing into discussion on proportionality of success, this issue has been resolved by the Employment Court in *William Coomer v JA McCallum and Son Limited* where the Court decided that 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 claim if it was successful with any claim.[4]

[11] Noting that Mr Narsinh's, albeit limited, success could not have been achieved without filing a case in the Authority, I consider that Mr Narsinh should receive a costs award. However, this must be balanced with the principles set out in *Da Cruz* recognising that costs are not to be used as a punishment. A penalty for the breach of the Act was awarded recognising the importance of minimum employment standards and to deter from future breaches of the same.

[12] Costs are also discretionary and awards made must be consistent with the Authority's equity and good conscience jurisdiction.

[13] Mr Kersjes referred to the recent Authority decision in *Reihana Macgregor v Southern Fencing Limited*[5] and I accept the similar successes in the two cases, though note importantly that failure to provide an employment agreement was disputed by Southern Fencing Ltd as the respondent.

Applying the daily tariff

[14] The Authority's general approach is to apply a notional daily rate and only adjust that rate if persuaded that circumstances or other factors require an upward or downward adjustment.[6] The current full daily rate is $4,500 for the first day of an

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[4] *Above at n. 3.*
[5] *Reihana Macgregor v Southern Fencing Limited* [2025] NZERA 209.
[6] For further information about the factors considered in assessing costs see: *www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1*

investigation meeting and $3,500.00 for every subsequent day of an investigation meeting. The investigation meeting took a full day.

[15] The daily tariff can be adjusted for relevant factors. Mr Kersjes rightly concedes that the tariff can be reduced to reflect mixed success and proposes it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing with the 25 percent deduction applied to reflect the mixed success of the parties in this matter.

[16] However, in these circumstances, I agree with Mr Easton, as counsel for Swift, that very little time during the investigation meeting was spent on the lack of an employment agreement. The meeting centred on the unjustified dismissal and disadvantage claims. The only success for Mr Narsinh was on a matter that was not an evidential dispute.

[17] 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. Here, success for Mr Narsinh was extremely limited and therefore the corresponding reduction should be equally significant. This recognises the principle-based approach to costs in *Da Cruz*, the proportion of time spent on the employment agreement breach as a proportion of the whole claim made by Mr Narsinh but also that Mr Narsinh needed to file with the Authority to require action from the Respondent regarding his employment agreement.

[18] This also aligns with the approach in *Reihana* that the failure to provide an employment agreement was "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".[7] Here, where the only success was on an undisputed point, I consider a 90 percent reduction in the daily tariff and no disbursements to be appropriate.

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[7] Above n. 5 at [15].

Conclusion

[19] Both parties had a degree of success in the claims made and both parties incurred similar legal costs. The nature of the success for Mr Narsinh was related to the penalty awarded. He was unsuccessful in his grievance and associated claims. Therefore, it is appropriate for the Authority to use its discretion by making an award that takes these factors into account.

[20] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, I order Swift Roofing Limited to pay Mr Narsinh a contribution to legal costs of $450.00 and reimbursement of $71.55 as the Authority filing fee.

Helen van Druten
Member of the Employment Relations Authority