

**NOTE: This determination
contains an order prohibiting
publication of certain
information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 825
3259300

BETWEEN	QNZ Applicant
AND	RNV Respondent

Member of Authority:	Matthew Piper
Representatives:	Hayley Johnson, advocate for the Applicant AA, for the Respondent
Investigation Meeting:	On the papers
Information and submissions received:	22 September 2025 and 28 November 2025 from the Applicant 22 October 2025 from the Respondent
Determination:	18 December 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 26 August 2025, the Authority issued a determination in which it found QNZ had a personal grievance for unjustified disadvantage and unjustified constructive dismissal in relation to her employment with RNV. QNZ was awarded lost remuneration of \$1,280.00 and \$20,000 as compensation for hurt and humiliation.

[2] The parties were encouraged to resolve the issue of costs, but have not succeeded in doing so.

Non-publication orders

[3] The non-publication orders set out in the Authority's determination of 26 August 2025 remain in effect.

Costs principles

[4] Clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) gives the Authority broad discretion as to costs. The Authority's discretion must be exercised in a principled manner.

[5] The Authority generally applies a "costs-follow-the-event" approach, which means the successful party will generally be entitled to a contribution to their costs in the Authority.

[6] The Authority has adopted a daily tariff approach to costs, meaning the starting point for considering costs for a one day investigation meeting, such as this one was, is \$4,500.00.

[7] The daily tariff is not a rigid rule, and the Authority may adjust the tariff figure up or down depending on the circumstances of the case.¹ Factors that are relevant for consideration in terms of whether costs are awarded and whether the tariff is adjusted include:

- a. The Authority's equity and good conscience jurisdiction as applied to the particular circumstances of the case;
- b. That costs are not to be used as punishment of a party or to express disapproval of conduct, rather they are to contribute to the costs incurred by the successful party; and
- c. Awards should be modest.

[8] Without prejudice save as to costs offers may also be considered by the Authority in deciding whether an adjustment to the daily tariff should be made.

¹ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

Discussion

[9] By memorandum of 22 September 2025 QNZ sought an uplift on the daily tariff to \$7,000.00. QNZ's principal argument was that a Calderbank offer had been unreasonably rejected by RNV.

[10] QNZ's memorandum was supported by the lodgement of a letter dated 30 September 2024 marked "*Without Prejudice – Save as to Costs*" which offered to resolve matters for a total of \$19,600.00. The letter noted that it may be produced by QNZ in support of an uplift to the notional daily tariff.

[11] Ultimately QNZ was awarded more by the Authority than she would have received if RNV had accepted her without prejudice offer. Substantive preparatory steps for the Authority's investigation meeting occurred after the without prejudice letter was sent, meaning costs were incurred by both parties some months following the declination of QNZ's offer to settle. In QNZ's case, these costs materially exceeded the \$7,000.00 she now seeks².

[12] On 22 October 2025 RNV indicated it would not be making submissions on the issue of costs.

Outcome

[13] QNZ was successful in her claim against RNZ and costs should follow the event.

[14] A modest uplift on the notional daily tariff is appropriate in all the circumstances to reflect the fact that a reasonable without prejudice offer was made at an early stage, but was rejected by RNV.

[15] A costs award of \$6,750.00 in QNZ's favour is appropriate in all the circumstances. This does not represent punishment of RNZ's conduct or indemnity costs. Rather, it is a reasonable contribution to QNZ's actually incurred costs.

[16] QNZ is also entitled to recover her filing fee.

² An invoice was provided by QNZ to support this position.

Orders

[17] Within 28 days of the date of this determination RNV is ordered to pay QNZ:

- a. \$6,750.00 as a contribution towards her costs;
- b. \$71.55 as reimbursement of the fee paid by QNZ to lodge her claim with the Authority.

Matthew Piper
Member of the Employment Relations Authority