

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 186
3259140

BETWEEN FRANK RESINK
 Applicant

AND EMPLOYMENT SERVICES LIMITED
 Respondent

Member of Authority: Antoinette Baker

Representatives: Paul Mathews, Advocate for the Applicant
 Paul Brown, Counsel for the Respondent

Submissions Received: 26 March 2025 from the Applicant
 31 March 2025 from the Respondent

Determination: 1 April 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] I issued a Determination on 24 February 2025¹ finding Mr Resink was unjustifiably constructively dismissed and ordered the respondent, (ES) to pay him \$15,000.00 compensation and a further \$17,500.08 gross in lost wages due to the grievance.²

¹ *Resink v Employment Services Limited* [2025] 104.

² Remedies under ss 123(1)(b) and (c) and 128 of the Employment Relations Act 2000.

[2] The parties were asked to resolve costs between themselves and have not. Mr Resink seeks an order for costs being \$7,000.00 plus the filing fee of \$71.55. ES replies simply that ‘the daily tariff is appropriate in this matter.’ I will now consider the application.

[3] The Authority has the discretionary power to award costs.³ A party should receive a reasonable contribution to costs incurred in achieving a successful result. Costs are discretionary, modest, and not a mechanism to punish the other party.⁴

[4] The Authority uses a notional daily tariff adjusting up or down as appropriate by considering a liable party’s means to pay costs, settlement offers made by either party, extra preparation if a case is complex, and conduct that has unnecessarily increased costs.⁵

[5] The current tariff applied for a one-day Authority investigation meeting is \$4,500.00. This amount is considered a starting point for assessing a reasonable contribution to the legal costs incurred by a successful party preparing and taking part in an investigation meeting but not including preparation and attendance at mediation.

Should there be an order for costs based on the tariff?

[6] Mr Resink was successful in his claim. The investigation meeting for the substantive matter took until approximately 3.00 pm with further information provided after this. I regard this as a full day attracting the starting point of \$4,500.00 as a contribution to Mr Resink’s costs.

[7] I also find it reasonable to order ES to reimburse Mr Resink’s filing fee of \$71.55.

Should there be an uplift or reduction to the starting point?

[8] It is submitted for Mr Resink that I should award an uplift of \$2,500.00 on the basis of a ‘Calderbank⁶’ offer made to ES on 31 May 2023, which included a heading of ‘without

³ Employment Relations Act 2000, Schedule 2, cl 15.

⁴ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme and Co Limited* [2015] NZEmpC 135 at 106-108.

⁵ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

⁶ 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

prejudice save as to costs'. It was communicated to ES's representative that Mr Resink considered ES had engaged in a 'pattern of conduct that has damaged the employment relationship beyond repair. Most notably it has breached good faith by being uncommunicative over the last three weeks and continues to claim it is conducting an investigation into my client. It has had ample time to provide the outcome of this investigation, but it hasn't. It is clearly engaged in a fishing expedition and found nothing.'

[9] The above offer went on to say Mr Resink would continue in the Employment Relations Authority but would offer to

... 'settle for an exit that includes his resignation, full and final settlement in return for:

- a. \$15,000.00 being compensation for hurt and humiliation under s 123(1)(c)(i)⁷
- b. \$2,000.00 + GST' in costs on provision of an invoice.

For the sake of clarity this offer is a **calderbank offer** that can be put before the Authority when it considers costs. We will be asking for an uplift in the daily tariff if my client won in the Authority and is awarded more than \$15,000. The offer remains open until 7 June 2023 at 5pm at which time it will lapse without need for further notice.'

Should an uplift be awarded to the tariff costs?

[10] I do not find an uplift should be awarded here because the offer came before the matters found in my determination to have been the 'last straw' for Mr Resink occurred causing him to resign; and because the Calderbank letter itself referred to bringing the claim to the Authority in the event ES was ordered to pay more than the \$15,000.00 offered as representing compensation. My determination awarded \$15,000.00 in compensation. Accordingly, I do not find an uplift is appropriate. I order ES to contribute to Mr Resink's costs at the tariff calculated above.

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.

⁷ Reasonably taken to be of the Employment Relations Act 2000.

Outcome

[11] ES is to pay Frank Resink \$4,500.00 as a contribution towards its costs in this matter together with the filing fee of \$71.55.

Antoinette Baker
Member of the Employment Relations Authority