

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2026] NZERA 41
3263719

BETWEEN MELANIE JANE ROLFE
Applicant
AND BEYONDER LIMITED
Respondent

Member of Authority: Geoff O’Sullivan
Representatives: Melanie Jane Rolfe in person.
Patrick Anderson & Sophie Fraser-McKenzie, counsel
for the Respondent
Investigation meeting: On the papers
Submissions received: None from Applicant
10 November 2025 from Respondent
Determination: 27 January 2026

COSTS DETERMINATION OF THE AUTHORITY

[1] By Determination issued on 22 October 2025, the Authority declined Melanie Rolfe’s personal grievance claims on the basis she was not an employee of Beyonder Limited but was an independent contractor. The issue of costs was reserved, and the parties were encouraged to resolve the issue themselves. They have been unable to do so and Beyonder has lodged a Memorandum seeking an order for costs. Ms Rolfe has not used the opportunity offered to lodge a reply memorandum.

[2] Costs have now been determined on the basis of the Authority’s usual practice and the submissions and additional information contained in Beyonder’s Cost Memorandum.

Assessment

[3] The Authority's discretion to award costs is well established and arises from s 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). The discretion to order a party to pay costs to another must be exercised on a principled basis and awards made consistent with the Authority's equity and good conscience jurisdiction. In determining costs the Authority applies well established principles to the particular circumstances of the case. Those principles recognise that a successful party should receive a contribution to its reasonably incurred costs and expenses; costs should generally be modest and may not be used to punish an unsuccessful party; the nature of the case may allow for an order that costs lie where they fall; and the Authority may use a notional daily rate as a starting point to assess costs. The current daily rate is \$4,500 for the first day of any investigation meeting, with a further \$3,500 for each additional day.

[4] The Authority may apply an upward or downward adjustment appropriate to the case. Such adjustments may take account of settlement offers made by either party, the financial means of a liable party to pay costs, the preparation required in particularly complex matters, and where the conduct of any party unnecessarily increased the costs incurred.

[5] Beyonder correctly notes that the matter took approximately one day and that the notional daily tariff of \$4,500 is the appropriate starting point. It asks for an increase of \$2,000 as a contribution to its legal costs in responding to Ms Rolfe's claims. This is on the basis that on 19 May 2025 it offered Ms Rolfe \$2,000 to settle her claims under s 123(1)(c)(i) of the Act (Calderbank offer). Ms Rolfe declined the offer and the matter proceeded. Beyonder argues that Ms Rolfe would have been better off had she accepted the offer and by declining it, she increased Beyonder's costs without any financial or vindicatory benefit.

No Uplift for Rejected Settlement Offer

[6] Although I accept Ms Rolfe would have been decidedly better off had she accepted the Calderbank offer, the parties agreed that the Authority would determine as a preliminary issue the question of whether Ms Rolfe was an employee of Beyonder or

whether she was acting as an independent contractor. There was a benefit in terms of time and cost to both parties in agreeing to this approach. Further, I do not find it unreasonable for Ms Rolfe to have rejected a \$2,000 offer in the particular circumstances of this case. The corresponding success of Beyonder is recognised in the ordinary tariff, not in an uplift to the usual rate.

Order

[7] Melanie Rolfe must pay the sum of \$4,500 to Beyonder Limited within 28 days of the date of this Determination as a contribution towards its costs..

Geoff O'Sullivan
Member of the Employment Relations Authority