

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 698
3247279

BETWEEN

CINDY ROOKES
Applicant

AND

TILLMANS FINE FURNITURE
LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Alex Kersjes, advocate for the Applicant
Katherine Dalziel, counsel for the respondent

Investigation Meeting: On the papers

Submissions Received: 20 September 2025 from the applicant
30 September 2025 from the respondent

Date of Determination: 31 October 2025

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 22 August 2024,¹ the Authority found that Tillmans Fine Furniture Limited had unjustifiably dismissed Cindy Rookes.

[2] Costs for the employment relationship problem were reserved so that the parties could try to agree costs. The parties have not agreed costs and now Ms Rookes seeks costs.

¹ *Cindy Rookes v Tillmans Fine Furniture Limited* [2025] NZERA 504.

Application for costs

[3] Ms Rookes seeks an award of costs of \$15,000 together with \$71.56 for the lodgement fee. Ms Rookes seeks this amount based on the application of the daily tariff for a two-day investigation meeting² adjusted for additional work done on written submissions and Tillmans' failure to accept a Calderbank offer.³

[4] Tillmans accepts that costs should be awarded to Ms Rookes but says this should be a reduced amount of \$4,500 based on Ms Rookes having mixed success with her claim. In this regard Ms Rookes was unsuccessful with:

- (a) Establishing that she was already an employee when she signed her employment agreement.
- (b) Her unjustified dismissal personal grievance relating to her dismissal in the trial period.
- (c) Establishing that she had raised a personal grievance for unjustified disadvantage during the trial period of employment.
- (d) Her unjustified disadvantage grievance relating to alleged bullying in the second period of employment.
- (e) Claims for penalties in respect of wages and time records, breach of good faith and unfair bargaining.

² 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. 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.

³ A Calderbank offer is an offer made by one party, normally a respondent, 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 using the stated words the offering party is reserving the right to bring the offer to 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.

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.⁴

Costs follow the event

[6] The starting point is that costs should follow the event; a successful party should be awarded costs from the other party. The issue that arises here is whether Ms Rookes has been successful because she failed with most of the elements of the employment relationship problem.

[7] The question of mixed success and an applicant's entitlement to costs has been resolved by the Employment Court in *William Coomer v JA McCallum and Son Limited*.⁵ The position is 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.

[8] Applying the principle here, Ms Rookes was successful in one aspect of the employment relationship problem and is entitled to an award of costs.

Applying the daily tariff

[9] In this case, there is no reason to depart from the Authority's normal approach of applying the daily tariff to calculate costs; so, I will calculate the award of costs based on the daily tariff.

[10] The investigation meeting for this matter took two days so the starting point for any

⁴ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

⁵ *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

costs award is \$8,000.

Adjusting the daily tariff

[11] The daily tariff can be adjusted for relevant factors, including any Calderbank offers and mixed success.

The Calderbank offer

[12] Calderbank offers are relevant to the award of costs for a successful applicant where a respondent has rejected a Calderbank offer to settle from the applicant and the applicant has then been awarded an amount in the subsequent determination that betters the offer. The rationale is that by continuing with its opposition to the applicant's claim rather than accepting the offer the respondent has incurred ongoing costs for both parties without justification – the resulting determination was a worse outcome for the respondent than accepting the applicant's offer.

[13] Ms Rookes points to Calderbank offer that she made to Tillmans on 6 June 2023. The offer was to settle the employment relationship problem for \$10,000 compensation and \$4,000 plus GST for costs. This offer was not accepted by Tillmans. Ms Rookes was awarded more than this amount in the Authority's determination.

[14] I accept that Ms Rookes' offer was a compliant Calderbank offer.⁶

[15] The rejection of Ms Rookes' offer by Tillmans is a basis to increase the daily tariff.

[16] The advocate for Ms Rookes says that the increase to the daily tariff for the rejection of a compliant Calderbank offer is 50% - so an additional \$4,000 for a two-day investigation meeting. I do not accept that there is an accepted approach to increasing the daily tariff in respect of Calderbank offers set at 50%. The range of increases varies.

[17] In this case I believe the increase should be a moderate one at \$1,000 per day.

Mixed success

[18] Mixed success can be a basis for reducing the daily tariff. For mixed success to be

⁶ *Ogilvie & Mather (NZ) Ltd v. Darroch* [1993] 2 ERNZ 943.

relevant to a reduction of the daily tariff the parts of the employment relationship problem need to be distinct and separate.

[19] If this employment relationship problem only concerned one set of facts or allegations there would only be one part of this employment relationship problem to be resolved. Succeeding in only one part of that problem would mean the loss of the other elements would not be relevant to my assessment of costs. Essentially all the evidence and investigation meeting time related to same part of the problem, how the problem was articulated and determined does not change that.

[20] However, if there are different and distinct parts of the employment relationship problem that are not related and are separate, then it is appropriate for me to consider a reduction to the daily tariff amount. This is because, as with this problem, there was a large amount of evidence and meeting time spent considering evidence and legal submissions that were not relevant to the successful part.

[21] In this case four parts of the employment relationship problem were separate; the dismissal grievance related to the first period of employment that ended pursuant to the valid trial period provision, an unjustified disadvantage grievance that was not raised in time, an unjustified disadvantage grievance for bullying in the second period of employment and three different penalty claims. So, there is mixed success that is relevant to a reduction in the daily tariff.

[22] In this case I conclude that an appropriate reduction is \$2,000 for each day of the investigation meeting.

Conclusion on adjusting the daily tariff

[23] So, applying the increase (\$1,000 per day) and decrease (\$2,000 per day) to the daily tariff the overall result is the daily tariff is to be reduced by \$1,000 per day.

The outcome

[24] Ms Rookes 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 \$1,000 per day. This means Ms Rookes is entitled to an award of costs of \$6,000.

[25] Ms Rookes is also entitled to the disbursement she has sought of \$71.56 for the lodgement fee.

Order

[26] Tillmans Fine Furniture Limited is to pay Cindy Rookes \$6,000 as a contribution to her costs in this matter. Tillmans Fine Furniture Limited must also pay Cindy Rookes \$71.56 for disbursements.

Peter van Keulen
Member of the Employment Relations Authority