

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 277
3303560

BETWEEN LATHAM RYDER
Applicant

AND LONGCHILL LIMITED
Respondent

Member of Authority: Shane Kinley

Representatives: Darren Mitchell, advocate for the applicant
Chris Quirk, for the Respondent

Investigation Meeting: On the papers

Submissions and further information: Up to 1 May 2025

Determination: 16 May 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a determination dated 17 February 2025 I found while LongChill Limited's (LCL) decision to dismiss Mr Ryder was substantially justified, he was unjustifiably dismissed due to procedural failings by LCL which were not minor and resulted in Mr Ryder being treated unfairly. I also found Mr Ryder significantly contributed to the situation giving rise to his grievance due to his failure to engage with LCL's disciplinary process.¹

[2] I also ordered LCL to:²

- a. Calculate and pay Mr Ryder one and a half months' lost wages under ss 123(1)(b) and 128 of the Employment Relations Act 2000 (the Act),

¹ *Ryder v LongChill Limited* [2025] NZERA 85 at [66]f and g.

² *Ibid* at [67] and [68].

including any holiday pay and employer Kiwisaver contributions applicable. This amount was to be reduced by 30 per cent to reflect Mr Ryder's significant contribution to the situation giving rise to his grievance; and

b. Pay Mr Ryder \$7,000 in compensation under s 123(1)(c)(i) of the Act.

[3] Costs were reserved in the hope the parties would be able to settle this issue between themselves.³ Unfortunately, they have been unable to do so, and Mr Ryder now seeks costs, while LCL made an offer in relation to costs which was not accepted by Mr Ryder.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Contribution to Costs

[5] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Act. The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.⁴

[6] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[7] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*⁵ as confirmed in *Fagotti v Acme and Co Limited*.⁶ The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful party's conduct.

³ Ibid at [70].

⁴ For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

⁵ [2005] 1 ERNZ 808.

⁶ [2015] NZEmpC 135 at 114.

Submissions

[8] Mr Ryder sought and order for costs based on the daily tariff at the rate of \$2,250.00, plus GST, given the matter was heard over a half day. Mr Ryder said he did not seek any uplift in costs from the daily tariff and says there are no relevant matters to warrant a reduction in costs below the daily tariff. A schedule of costs incurred by Mr Ryder was provided, showing actual costs which exceeded this amount.

[9] LCL said it's "offer to pay 50% of the \$2250-00 ERA cost was rejected by Mr [Ryder's advocate] which we considered fair and reasonable". It appears LCL's rationale for the amount LCL offered to pay was it was dissatisfied with the Authority's determination of Mr Ryder's claims.

Analysis

[10] I consider Mr Ryder is entitled to recover a reasonable contribution to the legal costs he incurred.

[11] In the preliminary determination I indicated:⁷

As the investigation meeting for this matter took until approximately 1PM, my preliminary view is the notional daily rate for half of the first day is the appropriate starting point for a determination of costs.

[12] I see no reason to depart from this preliminary view, which involved the application of the daily tariff. I accept submissions for Mr Ryder there are no grounds for either uplift or a reduction in costs from the daily tariff. I do not accept LCL's apparent dissatisfaction with the Authority's substantive determination warrants any reduction in costs from the daily tariff. I decline to order the uplift for GST sought by Mr Ryder having regard to the purpose behind the notional daily tariff.

Order

[13] LongChill Limited is ordered to pay Latham Ryder within 28 days of the date of this determination the sum of \$2,250 as a contribution to costs and to reimburse the filing fee of \$71.55.

Shane Kinley
Member of the Employment Relations Authority

⁷ Above n 1 at [73].