

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 334  
3309101

BETWEEN SAMANTHA SELWOOD  
Applicant

AND EASTERN REALTY  
LIMITED  
Respondent

Member of Authority: Rowan Anderson

Representatives: Ira White, advocate for the Applicant  
Stephen Langton and Marina Povey, counsel for the  
Respondent

Investigation Meeting: On the papers

Submissions and further 22 May 2025 for the Respondent  
information received: 12 June 2025 for the Applicant

Determination: 13 June 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 24 April 2025 the Authority issued a determination<sup>1</sup> in which I found that Samantha Selwood was not an employee of Eastern Realty Limited (Eastern Realty) and that the Authority therefore did not have jurisdiction to investigate claims made by her.

[2] Costs were reserved. The parties have not been able to agree on costs, and Eastern Realty now asks the Authority for orders as to the costs it incurred in defending the application made by Ms Selwood.

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<sup>1</sup> *Selwood v Eastern Realty Limited* [2025] NZERA 228.

[3] Having regard to the nature of the matter and the procedures involved, I advised in the determination issued that the parties could anticipate the Authority would determine costs, if asked to do so, on its usual “daily tariff” using a starting point of not more than a half day.

[4] Eastern Realty seeks a total contribution towards their costs of \$12,000 relating to the substantive proceeding, and an additional \$1,500 relating to its costs submissions. Eastern Realty contends that Ms Selwood unreasonably rejected a reasonable offer from Eastern Realty to resolve the matter and that Ms Selwood’s claim that she had been an employee was ‘legally doomed from the outset’.

[5] Ms Selwood accepts that the starting point based on the daily tariff would be \$2,250. It was submitted for Ms Selwood that she would be willing to accept that with a downward adjustment, and on the basis of a payment plan of \$50.00 per week. The basis for the proposed downwards adjustment to the daily tariff was not explicitly recorded in Ms Selwood’s submissions but her submissions did note a refusal to attend mediation, Ms Selwood’s costs, and Ms Selwood’s financial circumstances, as being relevant to the issue of costs.

### **Costs principles**

[6] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.<sup>2</sup>

[7] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that Calderbank offers may be taken into account, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party’s conduct.<sup>3</sup>

[8] The daily tariff is usually taken as a starting point,<sup>4</sup> although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>3</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

<sup>4</sup> Employment Relations Authority Practice Direction, August 2023, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>

## **Consideration**

[9] Eastern Realty was successful in defending the application and it is appropriate that costs follow the event.

[10] The matter was determined on the papers, primarily based on submissions, and the appropriate starting point half a day, that being \$2,250.

[11] A 'walk away' offer was made by Eastern Realty to Ms Selwood by way of letter dated 12 August 2024. The offer was, in effect that if Ms Selwood withdrew the proceedings that Eastern Realty would not pursue costs against her. The other primary claim made by Eastern Realty is that, as was also recorded in the correspondence of 12 August 2024, Ms Selwood's claim was bound to fail. The two primary points raised are somewhat interrelated.

[12] I do not consider an uplift to the daily tariff is warranted having regard to all of the circumstances. While the offer was made at an early stage, that occurred prior to Ms Selwood having set out in detail her case as to the jurisdictional challenge. I do not consider at that point it was necessarily clear that Ms Selwood's application was bound to fail. While not critical to determination of the issue in the end, I do consider the relevant documentary evidence to have clouded the issue somewhat making the situation less clear to Ms Selwood than it may otherwise have been. That included a reference to an employment agreement being attached, albeit that that was not reflected in the attached document.

[13] Given the nature of the jurisdictional challenge, I consider Eastern Realty were entitled to take the position they did in relation to voluntary attendance at mediation. I do not consider there any reasonable basis on which to adjust the tariff downwards.

[14] As a final observation, I record that the matter was relatively straight-forward and Eastern Realty has submitted, at least in effect, that Ms Selwood should have known she would be unsuccessful. No investigation meeting was required, and the jurisdictional question was dealt with on the papers. The matter was resolved at a relatively low level and I consider an application of the daily tariff is appropriate without modification.

[15] I am not satisfied that there is a sufficient basis, having regard to the absence of evidence, on which to entertain making any order for the sum to be paid by instalments. I would have declined to do so in any event having regard to the sum concerned.

## **Orders**

[16] I order Samantha Selwood to pay Eastern Realty Limited, within 28 days, the sum of \$2,250.00 as a contribution towards the costs Eastern Realty incurred in defending the application.

Rowan Anderson  
Member of the Employment Relations Authority