

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 609
3287779

BETWEEN SUJATHA UDUMULLAGA
Applicant

AND HOPKINS JOINERY
LIMITED
Respondent

Member of Authority: Claire English

Representatives: Adrian Plunket, advocate for the Applicant
Sarah Martin for the Respondent

Submissions received: 6 June 2025 from Applicant
23 July 2025 from Respondent

Determination: 30 September 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 15 May 2025, the Authority issued a determination in this matter in favour of the applicant, upholding her personal grievance claim of unjustified dismissal and making awards in her favour of some \$42,000. In that determination, the parties were encouraged to resolve any issue of costs between them, and the Authority made reference to its usual practice of applying the daily tariff to determine costs.

[2] The parties have not been able to resolve costs between themselves, and have filed memoranda accordingly.

[3] The applicant requests that she be awarded costs in the sum of \$10,000. This is on the basis that the investigation meeting lasted for one-and-a-half days, and an uplift

of \$3,750 should be made taking into account the respondent's refusal of a Calderbank offer.

[4] The respondent says that no costs should be awarded, or in the alternative that any award made should be significantly less than the daily tariff, "to reflect the Respondent's genuine efforts to avoid litigation". The respondent further submits that the investigation meeting only ran into a second day due to the use of an interpreter, and that it declined the applicant's Calderbank offer as its terms were "excessive and commercially impractical".

Analysis

[5] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act). 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*¹ as confirmed in *Fagotti v Acme and Co Limited*². The principle set out in the above cases is that costs are to be modest and should not be used as a punishment or expression of disapproval of the unsuccessful party's conduct.

[6] 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 days³. The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[7] Costs follow the event. In this matter, the applicant was the successful party. She is therefore entitled to an award of costs.

[8] I reject the submission made on behalf of the respondent that costs should not be awarded against it at all because it "did not initiate the proceedings" and rather "the Applicant proceeded with formal litigation despite opportunities to settle". I also reject the submission that to award costs at all amounts to a type of "punishment". It is a well-established principle that an unsuccessful party will be at risk of a costs award, and the

¹ [2005] 1 ERNZ 808.

² [2015] NZEmpC 135 at 114.

³ For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

Authority's daily tariff regime is also well known. An award of costs in and of itself does not amount to "punishment".

[9] The investigation meeting in this matter lasted for one-and-a-half days. It is therefore appropriate that the starting point is the tariff for a one-day hearing at \$4,500, plus half the tariff for a second day's hearing, at \$1,750.

[10] Thus the starting point is the amount of \$6,250.

[11] I reject the submission on behalf of the respondent that the second half day of hearing time should be discounted because of the use of an interpreter. The Authority required the use of an appropriately certified interpreter to ensure that its procedure was understood and that all parties were able to hear and consider evidence given by each other. The assistance of the interpreter did not inappropriately "prolong" the proceedings as is submitted by the respondent, but simply ensured that the matter could proceed in a fair way. I further note that the one-and-a-half days taken for the investigation meeting is not an unusual length of time for a dismissal matter. No reduction is required, and the starting point remains at \$6,250.

[12] The applicant seeks an uplift, to a total award of \$10,000, to recognise the respondent's refusal of a Calderbank offer. This offer provided for:

- a. Payment of \$20,000 in compensation for hurt and humiliation;
- b. Payment of \$3,500 plus GST in legal fees;
- c. A certificate of service;
- d. A positive verbal reference; and
- e. An acknowledgement that the ending of the applicant's employment was distressing.

[13] The applicant submits that the refusal of this offer should justify an uplift of \$3,750.

[14] The respondent submits that these terms were "excessive and commercially impractical – particularly the combination of financial and non-financial conditions". It is not explained why the respondent considers this to be so, especially in light of the fact that the Authority awarded almost \$20,000 more than the applicant indicated she would settle for which the respondent advises it has paid. I further note that the

applicant had worked for the respondent for many years and no criticism of her work was offered by the respondent during the Authority process. The respondent has not suggested any particular reason why it would be reluctant to accept the offer.

[15] Standing back and taking all these matters into account, I consider that the respondent's choice to decline the applicant's Calderbank offer justifies an uplift in costs over and above the daily tariff. I consider that an uplift of some \$2,000 would be fair, taking into account the Authority's normal practice.

Orders

[16] Hopkins Joinery Limited is ordered to pay to Ms Sujatha Udumullaga within 28 days of the date of this determination the sum of \$8,250 (inclusive) as a contribution to costs.

Claire English
Member of the Employment Relations Authority