

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 403
3265419

BETWEEN	WENDY DAWN VITA Applicant
AND	THE CAMPION COLLEGE BOARD Respondent

Member of Authority:	Claire English
Representatives:	Briar Campbell, counsel for the Applicant Myriam Mitchell, counsel for the Respondent
Submissions received:	15 May 2025 from Applicant 29 May 2025 from Respondent
Determination:	9 July 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 17 April 2025, the Authority issued a determination in this matter, finding that the applicant had a personal grievance in that she was unjustifiably disadvantaged in her employment, and awarding the sum of \$15,000 in her favour.

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

[3] It is submitted for the applicant that costs in the sum of \$9,325.00 be awarded to the applicant, on the grounds that this is a reasonable amount in all the circumstances including the length of time taken to resolve all matters between the parties and

attendance at mediation, that in terms of an uplift from the daily tariff the increase represents GST, and actual legal costs incurred by the applicant exceed this amount.

[4] It is submitted for the respondent that no uplift in costs should be awarded in this matter, as the applicant was not wholly successful in her claims. The respondent submits an award equivalent to the daily tariff for a one-day matter would be appropriate in this instance taking into account a Calderbank offer made by the respondent; and in the alternative, that any costs awarded be limited to the equivalent of the two-day tariff with no uplift from this.

What is the appropriate starting point?

[5] As is often stated, costs follow the event. In the current matter, the applicant has been the successful party. She is therefore entitled to a contribution to her legal costs.

[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 days¹.

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

[8] The investigation meeting in this matter was held over two days, in person and by AVL. The first day was a full day, running from 9.00 am to 4.00 pm, and the second day was from 9.30 to 3.30 pm, and my notes suggest ran slightly longer than the scheduled time.

[9] The starting point therefore is the daily tariff for a 2-day investigation meeting, being the sum of \$8,000.00.

[10] 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*² as confirmed in *Fagotti v Acme and Co Limited*³. The principle set out in

¹ For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

² [2005] 1 ERNZ 808.

³ [2015] NZEmpC 135 at 114.

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.

[11] Uplifts are most commonly awarded in circumstances where there has been conduct by a party that has unreasonably prolonged the hearing or contributed to costs. No such matters occurred here. While the applicant referred to events taking place over a significant period of time, the substantive determination found that not all of these matters were with time to support a claim, and once matters had been raised formally, the claim in the Authority progressed in the normal way. In addition, the Authority's tariff is a flat rate and is not adjusted for GST.

[12] There are no grounds for an uplift from the starting point of \$8,000.00.

[13] I have also considered whether there should properly be a reduction as contended for by the respondent on the grounds that a Calderbank offer exists that would have allowed the applicant to settle the matter for a similar sum to that awarded by the Authority. While this offer may be said to be for a similar sum, this is only on the basis that it included payment of an amount equal to the daily tariff for a one-day investigation meeting. I consider that this is not sufficient to justify such a significant reduction from the starting point.

[14] Overall, the usual tariff should apply.

Orders

[15] The Champion College Board is ordered to pay to Ms Wendy Dawn Vita within 28 days of the date of this determination the sum of \$8,000.00 (inclusive) as a contribution to costs.

Claire English
Member of the Employment Relations Authority