

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 97
3281039

BETWEEN	JOHN YOUNG Applicant
AND	PROGRAMMED SKILLED WORKFORCE NEW ZEALAND LIMITED First Respondent
AND	HEINZ WATTIE'S LIMITED Proposed Second Respondent

Member of Authority: Rowan Anderson

Representatives: Hayley Johnson, advocate for the Applicant
Kate Calder for the First Respondent
Jane Taylor, counsel for the Proposed Second Respondent

Investigation Meeting: On the papers

Submissions received: Up to and including 5 February 2025

Determination: 20 February 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 11 December 2024 the Authority issued a determination¹ in which I found that the Proposed Second Respondent, Heinz Wattie's Limited (Heinz Wattie's), should not be joined to the proceedings as a controlling third party. Costs were reserved. The parties have not been able to agree on costs, and Heinz Wattie's now asks the Authority for orders as to the costs it incurred in defence of the preliminary matter.

¹ *Young v Programmed Skilled Workforce New Zealand Ltd & Anor* [2024] NZERA 733.

[2] Heinz Wattie's seeks a total contribution towards his costs of \$4,750 (plus GST in relation to \$2,500 of that sum). The basis for that claim is that a half-day should be the starting point in relation to the Authority's daily tariff, and that an uplift of \$2,500 plus GST is appropriate on the basis that Mr Young did not meaningfully engage in seeking to resolve the issue of costs and that further unnecessary costs were then incurred in circumstances where that was unnecessary having regard to an offer made by Heinz Wattie's as to costs.

[3] It is submitted for Mr Young that the matter is ongoing as against the First Respondent and that Mr Young is facing continued costs and unable to meet the costs sought by Heinz Wattie's. It is also contended that there was no valid Calderbank offer made and that costs should lie where they fall.

Costs principles

[4] 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.²

[5] The daily tariff is usually taken as a starting point,³ although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

Consideration

[6] Heinz Wattie's was successful in defending the application and it is appropriate that costs follow the event.

[7] The proceeding, involving a preliminary issue as to whether Heinz Wattie's should be joined as a controlling third party, was dealt with on the papers. In my determination I indicated that the parties could anticipate the Authority would determine costs, if asked to do so, on its usual "daily tariff" with a starting point of not more than a half day. I consider the appropriate starting point to be a half day, the tariff being \$2,250.

² Employment Relations Act 2000, Schedule 2, clause 15.

³ Employment Relations Authority Practice Direction, August 2023, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>

[8] I am satisfied based on the invoices provided that the costs incurred by Heinz Wattie's, that being at least \$11,216.74, well exceeded the costs sought.

[9] I am not satisfied that there is sufficient evidence of an inability for Mr Young to make payment. The parties were on notice as to the approach to costs in the Authority and having regard to the relatively modest sum involved, I would not in any event have been satisfied that no costs award should be made.

[10] I am also not satisfied that the correspondence provided to the Authority as to attempts to resolve the issue of costs included a Calderbank offer, nor indeed an offer that has the usual characteristics of the same. Further, I do not consider an uplift effectively doubling the award relevant to the substantive should be made in relation to a costs issue is appropriate. On that basis, I do not consider an uplift is warranted.

Order

[11] I order John Young to pay Heinz Wattie's, within 28 days, the total sum of \$2,250.00 as a contribution towards the costs it incurred in defending the controlling third party application.

Rowan Anderson
Member of the Employment Relations Authority