

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 240
3237379

BETWEEN

KAREN HILL
Applicant

AND

TAMAKI LABOUR HIRE
LIMITED (IN
LIQUIDATION)
Respondent

Member of Authority: Sarah Blick

Representatives: Graeme Halse, counsel for the applicant
Steve Farquhar, liquidator for the respondent

Investigation meeting: On the papers

Information and Submissions received: 7 and 14 April 2025 from the applicant
17 April 2025 for the respondent

Determination: 2 May 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 21 February 2025 Karen Hill was successful in establishing personal grievances for unjustified dismissal and disadvantage in respect of her employment with the respondent, Tamaki Labour Hire Limited (Tamaki). She was awarded one weeks' lost wages and \$23,000 in compensation.¹ The Authority reserved the issue of costs.

[2] Following the issuing of the determination on 21 February 2025, the shareholders of Tamaki placed it into liquidation on 11 March 2025. Ms Hill now seeks costs.

¹ *Hill v Tamaki Labour Hire Limited* [2025] NZERA 100.

[3] Tamaki's liquidators have been served with the application for costs and have advised they will abide by the decision of the Authority on the issue of costs. I am satisfied this amounts to agreement to this matter continuing for the purpose of determining the application.²

Costs

[4] The Authority has power under clause 15 of Schedule 2 of the Employment Relations Act 2000 to award costs. This power is discretionary and must be used in a principled manner.³ Principles guiding the Authority's approach to costs include:

- the statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction
- equity and good conscience are to be considered on a case-by-case basis
- costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award
- costs generally follow the event
- awards of costs will generally be modest
- frequently, costs are judged against a notional daily tariff.

[5] The starting point for costs based on the Authority's daily tariff is \$4,500 for the first day.

Ms Hill's submissions

[6] The succinct submissions made on Ms Hill's behalf were:

- (a) Tamaki failed to make any settlement offers prior to the investigation meeting and put Ms Hill to considerable expense;
- (b) The investigation meeting took a full day and then significant written submissions were lodged due to the complicated nature of the evidence and the need to fully dispute Tamaki's claims justifying redundancy; and

² Companies Act 1993, section 248(1)(c).

³ *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808, and *Faggotti v Acme & Co Limited* [2015] NZEmpC 135.

(c) Ms Hill should be awarded costs of \$4,500 for the one-day investigation meeting, plus \$2,250 for preparation of the written submissions and reimbursement of the filing fee of \$71.55.

[7] Ms Hill accordingly seeks a total of \$6,821.55.

[8] There are no submissions from Tamaki to consider.

Costs assessment

[9] Ms Hill is entitled to an award of costs as the successful party.

[10] The Authority's investigation meeting took a full day, so the starting point is \$4,500 in costs. It is correct that fulsome written submissions were lodged after the investigation meeting. An uplift of \$1,000 is justified to reflect this.

[11] There will be no uplift on the basis Tamaki failed to make any settlement offers prior to the investigation meeting. It was open to Tamaki to defend the claims against it in the circumstances, particularly given there were clear factual disputes between the parties. Of note is that Tamaki successfully defended Ms Hill's claims to have been subjected to workplace bullying. It was clearly open to Ms Hill to make her own Calderbank offer(s) through her representative prior to the investigation meeting. Had she made a reasonable and effective offer to Tamaki that was rejected, this would have supported a claim for an uplift in costs. No such supporting information has been provided, and therefore the Authority sees no justification for uplifting costs in the circumstances.

[12] I consider an award for costs in the amount of \$5,500 plus the application fee of the Authority is appropriate.

Orders

[13] I order Tamaki Labour Hire Limited (in liquidation) to pay an award of costs to Karen Hill in the amount of \$5,500 and the application fee of \$71.55, within 14 days of the date of this determination.

Sarah Blick
Member of the Employment Relations Authority