

**NOTE: This determination contains orders prohibiting publication of certain information at [2]**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 250  
3258419

BETWEEN FTT  
Applicant

AND SINCLAIR PRYOR MOTORS  
LIMITED  
Respondent

Member of Authority: Shane Kinley

Representatives: David Oliver, counsel for the applicant  
Gary Tayler, advocate for the respondent

Investigation Meeting: On the papers

Submissions and further information: Up to 15 April 2025

Determination: 6 May 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] In a determination dated 22 January 2025 I found FTT was unjustifiably disadvantaged by Sinclair Pryor Motors Limited's (SPM) failure to sufficiently investigate FTT's complaint they had been sexually harassed. FTT's unjustified constructive dismissal and sexual harassment were not successful.<sup>1</sup>

[2] I ordered under cl 10(1) of sch 2 of the Act the applicant's name and those of other individuals who provided witness statements or were referred to in evidence are

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<sup>1</sup> *FTT v Sinclair Pryor Motors Limited* [2025] NZERA 29 at [77].

not to be published.<sup>2</sup> For the purposes of this determination the same non-publication order is made in relation the applicant's name.

[3] I also ordered SPM to pay FTT:<sup>3</sup>

- a. lost wages under s 123(1)(b) of the Act; and
- b. \$15,000 in compensation under s 123(1)(c)(i) of the Act.

[4] Costs were reserved in the hope the parties would be able to settle this issue between themselves.<sup>4</sup> Unfortunately, they have been unable to do so, and FTT now seeks costs while SPM sought an order costs lie where they fall.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **Contribution to Costs**

[6] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Act. 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 days.<sup>5</sup>

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

[8] 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*<sup>6</sup> as confirmed in *Fagotti v Acme and Co Limited*.<sup>7</sup> The principle set out in 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.

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<sup>2</sup> Ibid at [6].

<sup>3</sup> Ibid at [78].

<sup>4</sup> Ibid at [80].

<sup>5</sup> For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

<sup>6</sup> [2005] 1 ERNZ 808.

<sup>7</sup> [2015] NZEmpC 135 at 114.

### *Submissions*

[9] FTT said as their substantive claim was successful on one of the two heads of claim they raised, being the disadvantage claim, costs should be awarded based on the daily tariff for one day with a modest uplift due to additional attendances in relation to whether a non-publication order should be made.

[10] SPM said both parties achieved a measure of success, with SPM successfully defending the unjustified constructive dismissal and sexual harassment claims. SPM said there was ample legal precedent for costs to lie where they fall.

### *Analysis*

[11] I consider FTT is entitled to recover a reasonable contribution to the legal costs they incurred.

[12] The Employment Court in *Coomer v JA McCallum and Son Limited* said any success for an applicant is sufficient success for the purposes of costs<sup>8</sup>, including observing “it was appropriate to consider costs in this case by standing back and looking at things “in the round” and, in doing so, to conclude there had been mixed success”.<sup>9</sup> The Court’s approach in *Coomer* was “to adopt the tariff in the Authority, but to reduce it to reflect the measure of success McCallum & Son had”.<sup>10</sup>

[13] In the preliminary determination I indicated:<sup>11</sup>

As the investigation meeting for this matter took most of one day, concluding mid-afternoon, my preliminary view is the notional daily rate for one day is the appropriate starting point for a determination of costs

[14] While I accept FTT was not successful on all of their claims, they were successful in relation to their unjustified disadvantage claim. FTT’s success, albeit limited, could not have been achieved without filing a case in the Authority.

[15] Standing back and looking at things “in the round”, as that success was only partial, I consider a downward adjustment to the daily tariff is appropriate and find a one-half reduction to the daily tariff is appropriate.

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<sup>8</sup> *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156 at [42].

<sup>9</sup> *Ibid* at [43].

<sup>10</sup> *Ibid* at [45].

<sup>11</sup> Above n 1 at [83].

[16] I do not consider an uplift to the daily tariff is appropriate in relation to submissions on whether a non-publication order should be made. Submissions on this matter were limited and followed a request for clarification from the Authority.

**Order**

[17] Sinclair Pryor Motors Limited is ordered to pay FTT within 28 days of the date of this determination the sum of \$2,250 as a contribution to costs and to reimburse the filing fee of \$71.55.

Shane Kinley  
Member of the Employment Relations Authority