

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 252
3178003

BETWEEN	ANGHARAD O'BRIEN Applicant
AND	THE PLATFORM MEDIA NZ LIMITED Respondent

Member of Authority:	Rowan Anderson
Representatives:	Barbara Buckett, counsel for the Applicant Michael O'Brien, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions and other information received:	3 March 2025 and 6 May 2025 from Applicant 29 April 2025 from Respondent
Determination:	7 May 2025

COSTS DETERMINATION OF THE AUTHORITY

Background and submissions

[1] On 3 February 2025 the Authority issued a determination¹ in which I found that Ms O'Brien had been unjustifiably disadvantaged in her employment and was entitled to compensation for humiliation, loss of dignity, and injury to feelings.

[2] Costs were reserved. The parties have not been able to agree on costs, and Ms O'Brien now asks the Authority for orders as to the costs she incurred in pursuing her claims against The Platform Media NZ Limited (The Platform).

[3] Ms O'Brien seeks a total contribution towards her costs in the sum of \$15,000. This is said to be based on the daily tariff contribution totalling \$9,750, GST of

¹ *Angharad O'Brien v The Platform Media NZ Limited* [2025] NZERA 56.

\$1,462.50 on the tariff sum, disbursements of \$533.80, and \$3,000 to \$4,000 as an uplift sought based on conduct leading up to and during the investigation meeting.

[4] The Platform submits that any costs awarded to Ms O'Brien should be reduced from the tariff of \$9,750 to \$4,000 based on some of Ms O'Brien's claims being unsuccessful and other actions it contends unnecessarily increased The Platform's costs. The Platform rejects the uplift claimed by Ms O'Brien, the uplift claimed relating to GST, and the disbursements sought (with the exception of the filing fee).

Costs principles

[5] 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

[6] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that Calderbank offers may be taken into account, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.³

[7] The daily tariff is usually taken as a starting point,⁴ although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

Consideration

[8] Ms O'Brien was successful in pursuing her primary claims and it is appropriate that costs follow the event.

[9] The daily tariff approach would see a contribution of \$4,500 for the first, \$3,500 for the second day, and \$1,750 for a further half day including submissions. Both parties approached submissions using the sum of \$9,750 and I am satisfied that is the appropriate starting point.

[10] Ms O'Brien was entitled to pursue her claims. I do not consider a decrease in the tariff is appropriate on the basis that Ms O'Brien was only partially successful.

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

³ *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

⁴ Employment Relations Authority Practice Direction, August 2023, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>

Standing back and looking at the matter, Ms O'Brien was successful in pursuing her primary claims and is entitled to a contribution towards her costs. I am also not satisfied that Ms O'Brien's late withdrawal of a claim for reinstatement, lodging an amended statement of problem, or any refusal to provide evidence of lost wages to The Platform meaningfully increased costs to The Platform such as would warrant a departure from the daily tariff.

[11] I am also not satisfied that an uplift to the daily tariff is appropriate. I do not consider the dismissal of Ms O'Brien a matter relevant to costs in this case. As to the issues raised relating to spurious evidence and non-disclosure of redacted material, I am not satisfied that either caused increased costs or had any significant impact on the time required for the investigation meeting. Further, I decline to make any allowance for what is said to have been a withdrawal from an agreement to facilitate.

[12] Costs in the Authority are GST neutral and I decline to award any uplift on based on an absence of Ms O'Brien being GST registered. Further, as to Ms O'Brien's claim that there should be an uplift on the basis of non-engagement regarding the issue of costs, I do not consider what would in effect be an award of costs on costs appropriate.

[13] Ms O'Brien claims disbursements totalling \$533.79 as follows:

- (a) \$71.55 as reimbursement of the filing fee;
- (b) \$184 in relation to the production of transcripts of recordings of relevant meetings; and
- (c) \$278.24 representing the cost of tab dividers for copies of the applicant's bundle.

[14] Ms O'Brien is entitled to reimbursement of the \$71.55 filing fee having been successful in pursuing her primary claims. I find that the expenses of \$278.24 and \$184.00, associated with compiling the applicant's bundle of documents and in obtaining a transcription of relevant meetings respectively, are expenses that should be reimbursed. I am satisfied that those modest expenses were reasonably incurred and the production of the relevant materials assisted the Authority's investigation.

Orders

[15] I order The Platform Media NZ Limited to pay Ms O'Brien, within 28 days, the sum of \$9,750 as a contribution towards the costs she incurred in pursuing her claims and \$533.79 in disbursements.

Rowan Anderson
Member of the Employment Relations Authority