

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 289
3177193

BETWEEN	AARON YAQUB Applicant
AND	NEILSONS LAWYERS LIMITED Respondent
	MARTELLI YAQUB LAWYERS LIMITED Second Respondent (Former)

Member of Authority:	Marija Urlich
Representatives:	Daniel Erickson, counsel for the First Applicant Paul Robertson, counsel for the Second Respondent Angela Evans and Tanya Preston, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	2 April 2025, from the Applicant up to and including 16 April 2025, from the Respondent up to and including 31 March 2025, from the second Respondent (Former)
Determination:	23 May 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority issued a determination on 6 March 2025 which found Mr Yaqub had established personal grievances for unjustified disadvantage and unjustified dismissal for which he was awarded remedies and found Neilsons Lawyers Limited's counterclaim (NLL) was unsuccessful.¹ Costs were reserved and a timetable set if the

¹ *Aaron Yaqub v Neilsons Lawyers Limited* [2025] NZERA 139.

parties were unable to resolve this issue themselves which they advise has not been possible. The parties were also invited to attempt to resolve the outstanding costs issue involving a withdrawn claim NLL brought against Martelli Yaqub Lawyers Limited (MYL).

[2] The Authority is advised costs remain unresolved. Mr Yaqub seeks by way of memorandum filed and served within the timetable a contribution to costs from NLL as does MYL.

Costs principles

[3] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. 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 is 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 increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.

Mr Yaqub's claim for costs

[4] Mr Yaqub seeks an award of \$55,500 (inclusive), as a contribution to total costs of representation. Detailed supporting information has been provided. He submits the award sought is warranted given:

- he was successful in his claims and NLL's counterclaim was not established;
- an uplift is warranted given:
 - (i) Mr Yaqub made a valid without prejudice settlement offer made on 22 June 2022 to settle his personal grievances whereby his employment would end by way of resignation and NLL would

make the following payments – four weeks’ pay in lieu of notice, \$23,000 under s 123(1)(c)(i) of the Act and a contribution towards legal costs of \$16,500 plus GST;

- (ii) NLL’s conduct and actions have caused unnecessary expense including having the matter heard by the Authority given NLL:
 - a. is a well-established law firm offering litigation and employment law services, it was aware of the significant level of costs involved in proceedings of this nature and appear to have used this as leverage;
 - b. made broad and vaguely worded requests for documentation from Mr Yaqub which were effectively a “fishing expedition” causing significant additional expenses to be incurred;
 - c. failed to meet the deadline for filing its witness statements which resulted in the original investigation meeting dates being vacated;
 - d. lodged and withdrew counterclaims which had required Mr Yaqub to incur significant expenses; and
 - e. utilised one of its directors as counsel on the record when the counterclaim and requests for documents were lodged and this inherent lack of objectivity given his dual role was likely a factor the misconceived aspects of the counterclaim and information requests.

MYL’s position on costs

[5] MYL seeks indemnity costs. It says the claim against it was tactical and without merit and this was demonstrated when, following repeated requests for particulars, repeated opportunities to withdraw the claim and the lodging of a statement in reply, the amended statement of problem omitted MYL as a respondent party. It says it was represented on a very economical basis and has incurred total costs of \$6,470.55 (including GST). MYL also an uplift in respect of its watching brief on the matter.

NLL's position on costs

(i) *Mr Yaqub*

[6] NLL submits there are no circumstances or factors which warrant an increase in tariff costs as sought and an award of not more than \$16,750:

- both parties made requests for documents;
- both parties sought extensions for filing which required amendments to the timetable; and
- Mr Yaqub's without prejudice settlement offer was ineffective and should be given no weight because:
 - the offer was made before Mr Yaqub's employment ended and one month before proceedings were lodged;
 - there was insufficient time to consider the offer; and
 - the offer contains no specific cost consequence if declined, likely because no proceedings had been lodged.

(ii) *MYL*

[7] NLL says the starting point for any costs assessment, including this one, is the notional daily tariff. It submits that when a costs award has been made for discontinued claims the awards are modest and in the circumstances of this matter, there should be no costs award.

[8] NLL says its actions were not 'flagrant' and do not justify the indemnity award sought. It submits when the counterclaim was filed against MYL it had evidence as to its actions and that on receiving further legal advice and review of information provided by Mr Yaqub, discontinued the claim against MYL. It submits factors relevant to an indemnity award are not present:²

- (i) there was no loss of Authority time;
- (ii) there was no ulterior motive;
- (iii) NLL had regard to the law and the facts at time of filing; and
- (iv) the allegations made on a reasonable assessment of the known facts at the time.

² *Bradbury v Westpac Banking Corp* [2009] NZCA 234 at [28].

Costs analysis

(i) Mr Yaqub

[9] Mr Yaqub was the successful party and it is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party's costs.

[10] The notional daily tariff is a starting point. The applicable daily tariff is \$4,500 with each subsequent day at \$3,500. I am satisfied this matter involved four and a half days of investigation meeting. The starting point is therefore \$16,750. It is not accepted there are circumstances to warrant rounding up the investigation meeting time to five days to recognise the call on counsel's time and preparation for subsequent written submissions.

[11] Mr Yaqub's without prejudice settlement offer is valid – it was made and rejected on a “without prejudice save as to costs” basis, its terms were clear including that if it was not accepted Mr Yaqub had instructed counsel to lodge proceedings, if it had been accepted it is less than the total sum awarded him by the Authority and the time to consider the offer was reasonable given NLL's specialist ability to consider it and its subsequent clear rejection of the offer on grounds that its actions were reasonable.

[12] While proceedings had not been lodged, they were clearly in the parties' contemplation. Mr Yaqub had raised two personal grievances including one of unjustified constructive dismissal by the date the without prejudice settlement offer was made, the offer included if settlement could not be achieved the grievances would be referred to the Authority, the parties had exchanged detailed communications as to their positions and had engaged in a statutory dispute resolution process by way of mediation. This was a valid settlement offer which warrants an increase in the starting point for costs.

[13] What then is an appropriate uplift? A steely approach is to be taken to setting costs where a valid settlement offer has been made. The offer was made very early in the employment relationship problem. NLL would have been better off in accepting Mr Yaqub's settlement offer given his personal grievances were upheld and the level of

award made in his favour. In the circumstances of this matter and having regard to other determinations where an increase in the tariff has been ordered an increase by \$5,250 is warranted representing an additional day and a half of tariff costs. Mr Yaqub is entitled to a contribution to costs of \$22,000. He is also entitled to reimbursement of the filing fee of \$71.56.

[14] Mr Yaqub says how NLL conducted the matter has caused increased costs. Both parties thoroughly pursued their claims, as they are entitled and there were delays which impacted the timetable. Objectively assessed, even if some of those actions were found to have increased costs, it is difficult to accurately determine how they may have done so in a way which would justify an increase in costs.

[15] A fair costs award, given all the relevant circumstances is in Mr Yaqub's favour of \$22,000 plus reimbursement of the filing fee of \$71.55.

(ii) *MYL*

[16] MYL incurred legal costs unnecessarily because NLL discontinued the claim. It is entitled to a consideration of costs incurred. I am satisfied it has incurred costs at the level claimed and that the level of costs was reasonable. This is not a case where indemnity costs are warranted because the necessary features are not present. A costs award in favour of MYL of \$3,500 is warranted and ordered.

Outcome

[17] Neilsons Lawyers Limited is ordered to pay Aaron Yaqub \$22,000 as a contribution to costs incurred and to reimburse him the filing fee of \$71.55.

[18] Neilsons Lawyers Limited is ordered to pay Martelli Yaqub Lawyers Limited \$3,500 as a contribution to costs incurred.

Marija Urlich
Member of the Employment Relations Authority