

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 290
3263539

BETWEEN LOGAN MURRAY
 Applicant

AND OWAKA MOTORS (2008)
 LIMITED
 Respondent

Member of Authority: Lucia Vincent

Representatives: Alex Kersjes, advocate for the Applicant
 Perry Moore for the Respondent

Investigation Meeting: On the papers

Submissions and further 12 May 2025 from the Applicant
information received: 8 and 20 May 2025 from the Respondent

Determination: 23 May 2025

COSTS DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] On 14 April 2025 the Authority determined that Owaka Motors (2008) Limited (OML) unjustifiably dismissed Mr Murray.¹

[2] Costs were reserved. If the parties could not agree on costs, then the Authority invited the parties to lodge memoranda. They have done so and asked the Authority to resolve the issue of costs for them.

¹ *Murray v Owaka Motors (2008) Limited* [2025] NZERA 207.

Cost principles

[3] Clause 15 of Schedule 2 of the Employment Relations Act 2000 (Act) gives the Authority discretion to order any party to a matter to pay to another party such costs and expenses as the Authority thinks reasonable.

[4] If unsuccessful, a party will usually have to contribute to the legal costs of the successful party, as well as meeting their own costs.

[5] The daily tariff applied by the Authority sets the starting point from which relevant factors and principles may guide an upward or downward adjustment of the amount of costs awarded. Practice Note 2 for the Authority sets the current tariff for costs at \$4,500 for the first day of any matter.²

[6] The Employment Court has endorsed the average daily tariff approach of the Authority and relevant principles governing costs in the Authority.³ These include considering whether the conduct of the parties increased costs unnecessarily (warranting an adjustment up or down), without compromising the Authority's otherwise modest approach to costs.⁴

Submissions

[7] In a memorandum on costs dated 12 May 2025, Mr Murray sought \$4,000 as a fair and reasonable contribution towards his costs.

[8] In support of his claim for costs Mr Murray's advocate says:

- (a) Costs were significantly more than the contribution sought. An invoice dated 12 May 2025 recorded costs totalling \$13,797.95. This was made up of an amount for 37.3 hours of work, the filing fee as a disbursement and GST.
- (b) Although no formal Calderbank was made, efforts were made to explore settlement. OML did not engage constructively with those efforts.

² Practice Direction of the Employment Relations Authority

³ *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [43-47] and *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135 at [108].

⁴ *PBO*, above n 3, at [43-47].

- (c) Although the investigation meeting took about half a day, providing a starting point of \$2,250.00, submissions were timetabled for after this, warranting an uplift to \$3,375.00.

[9] For OML, Mr Moore says:

- (a) OML is a small business.
- (b) OML successfully defended two out of the three allegations (Mr Murray did not succeed in his discrimination claim or that OML had not provided an employment agreement). This created unnecessary cost.
- (c) The Authority reduced Mr Murray's remedies by 15% for contribution. Costs should also be reduced.

Conclusion on costs

[10] The investigation meeting for this matter took no longer than half a day. Mr Murray and his advocate attended at their request by AVL. Mr Murray and Mr Moore gave evidence. Submissions were timetabled by agreement following further information both Mr Murray and Mr Moore provided.

[11] This was a relatively straightforward matter. It involved few witnesses. Whilst submissions were timetabled, that does not require a significant uplift. In the absence of any evidence of a valid Calderbank offer, no further uplift would be justified on that basis.

[12] Mr Murray succeeded on only one of this three claims. However, he succeeded on his substantive claim of unjustified dismissal. The evidence and submissions were relatively succinct and largely relevant to the substantive issue. He is the successful party and is entitled to an award of costs.

[13] I do not consider it appropriate to reduce costs for contribution under s 124 of the Act. Section 124 applies to remedies awarded under s 123 in settling the grievance. I have already taken contribution into account when deciding the nature and extent of the remedies provided to Mr Murray.

[14] Having considered all the circumstances, I award an amount of \$2,500.00 to Mr Murray by way of costs, plus his filing fee of \$71.55 as an expense.

Order

[15] I order OML to pay Mr Murray within 28 days of the date of this determination:

- (a) costs of \$2,500.00; and
- (b) reimbursement of his filing fee of \$71.55.

Lucia Vincent
Member of the Employment Relations Authority