

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 294  
3285639

BETWEEN	DIEDERIK VAN HEERDEN Applicant
AND	LONGEVITY LIMITED First Respondent
AND	ANTHONY CORIN Second Respondent

Member of Authority:	Rachel Larmer
Representatives:	Nita Sadie, advocate for the Applicant Stuart Brauning, advocate for the Respondents
Investigation Meeting:	On the papers
Submissions and Other Information Received:	30 April 2025 and 7 May 2025 from the Applicant 22 May 2025 from the Respondents
Date of Determination:	26 May 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] On 16 April 2025 the Authority issued a substantive determination in which the applicant, Mr Diederik van Heerden, was the successful party.<sup>1</sup>

[2] The first respondent, Longevity Limited (Longevity) was found to have breached the Wages Protection Act 1983 (the WPA), its good faith obligations in s 4 of the Employment Relations Act 2000 (the Act) and Mr van Heerden's employment agreement. Mr van Heerden established that Longevity owed him wage arrears, had

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<sup>1</sup> *van Heerden – Longevity Ltd & Corin* [2025] NZERA 217.

engaged in breaches of employment standards and that his dismissal had been unjustified.

[3] Longevity was ordered to pay a \$1,000.00 penalty for its breach of the WPA. Longevity was ordered to pay Mr van Heerden \$770.12 wage arrears, he was awarded interest on his wage arrears and he was awarded \$206,138.47 for his successful unjustified dismissal personal grievance.

[4] The second respondent, Mr Anthony Corin, was found to have aided and abetted Longevity's breaches of Mr van Heerden's employment agreement. A penalty of \$1,000.00 was imposed on Mr Corin for that.

[5] Mr Corin was also found to be a person who had been involved in Longevity's breaches of employment standards. Mr van Heerden was therefore given leave to recover from Mr Corin personally any wage arrears or other money that Longevity defaulted on paying him.

[6] There was no reason for this matter to depart from the usual principle that a successful party is entitled to a contribution towards their actual legal costs. Mr van Heerden, as the successful party, is entitled to a contribution towards his actual legal costs from both respondents.

[7] Although the parties were encouraged to resolve costs by agreement, that has not occurred. Mr van Heerden asked the Authority to award him costs and disbursements of \$7,895.05.

### **Legal position**

[8] The Authority derives its power to award costs from clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act).

[9] Costs are discretionary, with the discretion to be exercised by the Authority on a principled basis. An unsuccessful party/parties will normally be required to contribute towards the successful party's actual legal costs.

[10] Costs must not be used to punish a party, or to express disapproval of a party's conduct, unless that conduct had increased the other party's actual legal costs

unnecessarily. However, conduct by one party that has unreasonably increased the other party's actual legal costs may be reflected in the amount of costs awarded.<sup>2</sup>

[11] The Authority usually adopts a notional daily tariff based approach to costs. The current tariff is \$4,500.00 for the first day of an investigation meeting and \$3,500.00 for each subsequent day. The notional starting tariff is then adjusted to reflect the particular circumstances of each case.

[12] When assessing costs in this matter the Authority has had regard to the costs assessment principles identified by the Employment Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz* and *Fagotti v Acme & Co. Limited*.<sup>3</sup>

### **Issues**

[13] The following issues are to be determined:

- (a) What costs and disbursements did Mr van Heerden actually incur?
- (b) What is the notional starting tariff for assessing costs in this matter?
- (c) Should the notional starting tariff be adjusted?
- (d) What costs and disbursements should Mr van Heerden be awarded?

### **What costs and disbursements did Mr van Heerden actually incur?**

[14] As per an invoice submitted to the Authority, Mr van Heerden actually incurred legal costs of \$6,612.50 GST inclusive. He has also sought reimbursement of disbursements totalling \$145.00, consisting of \$71.55 for his filing fee plus \$73.50 parking costs while attending the investigation meeting.

[15] These amounts represent the maximum Mr van Heerden could potentially recover, as he cannot be awarded more in legal costs than he has actually incurred.

### **What is the notional starting point for assessing costs?**

[16] Mr van Heerden's claims were heard together with the claims made by another former Longevity employee Mr Robert Williams.<sup>4</sup> Both matters involved three days of investigation meeting time. Approximately the same amount of investigation meeting

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<sup>2</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808.

<sup>3</sup> *PBO* above n2, and *Fagotti v Acme & Co. Limited* [2015] NZEmpC 135.

<sup>4</sup> AEA 3285659.

time was required for each matter, so each matter took one and a half days of investigation meeting time.

[17] Accordingly, the notional starting tariff for assessing costs in this matter is \$6,250.00. This amount represented the notional starting tariff for a one and a half day investigation meeting (being \$4,500.00 for the first day plus \$1,750.00 for the subsequent half-day investigation meeting).

**Should the notional starting tariff be adjusted?**

[18] The parties did not identify any factors they said should result in the notional starting tariff being decreased.

[19] Normally the lack of success and/or late withdrawal of claims by an applicant would affect the costs assessment. However, in this case the respondents either did not address these withdrawn claims in their evidence, or the evidence presented was so minimal it did not warrant a reduction being made to the notional starting tariff on the basis the respondents had incurred unnecessary legal costs preparing for claims that were withdrawn.

[20] Accordingly, there were no factors that should result in the notional starting tariff being decreased.

[21] Mr van Heerden submitted the notional starting tariff should be increased to reflect that the respondents had unreasonably rejected “without prejudice except as to costs” (*Calderbank*) settlement offers.

[22] The first offer was made on 18 June 2024, which was almost six months before the investigation meeting. The second offer was made on 27 November 2024, five days before the investigation meeting which commenced on 3 December 2024. The offer remained on until 2 December 2024, the day before the investigation meeting started. The third offer was made on 23 April 2025. The last offer proposed to settle costs issues, failing which a costs application would be made. The offer to settle costs was made one week before Mr van Heerden’s costs submissions were lodged.

[23] The first *Calderbank* offer if accepted would have avoided the need for the parties to lodge evidence. Mr van Heerden’s evidence was lodged on 30 September 2024, so the savings for the parties would have been considerable.

[24] The unreasonable refusal of this first Calderbank offer in itself warranted increasing the notional starting tariff by \$362.50 so that the adjustment to the notional starting tariff reflected the full amount Mr van Heerden had actually incurred. However, if his actual costs had been more, then the increase for this factor would have also been considerably more.

[25] A higher increase to the notional starting tariff than \$362.50 could not be imposed because the maximum Mr van Heerden could be awarded in costs was the amount of legal costs he had actually incurred, which was \$6,612.50.

**What costs and disbursements has Mr van Heerden been awarded?**

[26] Within 28 days of the date of this determination, the respondents on a joint and several liability basis, are ordered to pay Mr van Heerden \$6,684.05, consisting of:

- (a) \$6,612.50 GST inclusive, as a contribution towards his actual legal costs; and
- (b) \$71.55, to reimburse his filing fee.

[27] Mr van Heerden's claim for reimbursement of his parking costs was not successful, as parties must bear their own costs associated with attending an investigation meeting.

Rachel Larmer  
Member of the Employment Relations Authority