

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 295
3285659

BETWEEN	ROBERT WILLIAMS 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

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 16 April 2025 the Authority issued a substantive determination in favour of the applicant, Mr Robert Williams against the first respondent Longevity Limited (Longevity).¹

[2] During the investigation meeting, Mr Williams withdrew the claims he had made against the second respondent Mr Anthony Corin.

¹ *Williams v Longevity Ltd & Corin* [2025] NZERA 215.

[3] Longevity was found to have unjustifiably dismissed Mr Williams, and it was ordered to pay him remedies of \$67,958.67.

[4] 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 Williams, as the successful party, is entitled to a contribution towards his actual legal costs from Longevity.

[5] Although the parties were encouraged to resolve costs by agreement, that has not occurred. Mr Williams asked the Authority to award him costs of \$7,750 plus GST and \$145.05 for disbursements, totalling \$7,895.05.

Legal position

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

[7] 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.

[8] 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.²

[9] 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.

[10] 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*.³

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

³ *PBO Ltd* above n2, and *Fagotti v Acme & Co. Limited* [2015] NZEmpC 135.

Issues

[11] The following issues are to be determined:

- (a) What costs and disbursements did Mr Williams 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 Williams be awarded?

What costs and disbursements did Mr Williams actually incur?

[12] As per an invoice submitted to the Authority, Mr Williams 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.

[13] These amounts represent the maximum Mr Williams 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?

[14] Mr Williams' claims were heard together with the claims made by another former Longevity employee Mr Diederik van Heerden.⁴ Both matters involved three days of investigation meeting time. Approximately the same amount of investigation meeting time was required for each matter, meaning Mr Williams' matter involved a one and a half day investigation meeting.

[15] Accordingly, the notional starting tariff for assessing costs in this matter is \$6,250.00. This amount represents the notional starting tariff for a one and a half day investigation meeting (being \$4,500 for the first day plus \$1,750 for the subsequent half-day investigation meeting).

Should the notional starting tariff be adjusted?

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

⁴ AEA 3285639.

[17] Normally the withdrawal of claims by an application at a late stage in the investigation would be reflected in the assessment of costs. However, in this particular case the respondents either presented no evidence on the withdrawn claims or their evidence was so minimal that it was not appropriate to reduce the notional starting tariff. Accordingly, the notional starting tariff was not decreased.

[18] Mr Williams submitted the notional starting tariff should be increased to reflect that the respondents had unreasonably rejected a number of “without prejudice except as to costs” (*Calderbank*) settlement offers regarding the substantive claim and one *Calderbank* settlement offer regarding costs sought.

[19] The first offer was made on 18 April 2024, more than six months before the investigation meeting. The second offer was made on 18 June 2024, which was almost six months before the investigation meeting. The third offer was made on 27 November 2024, five days before the investigation meeting which commenced on 3 December 2024. The fourth offer was made on 23 April 2025, regarding settlement of costs in this matter. This final offer was made one week before Mr Williams’ costs submissions were lodged.

[20] If Longevity had accepted the first *Calderbank* offer the parties would have avoided the need to lodge any evidence. Mr Williams’s evidence was lodged on 30 September 2024, so the savings for the parties would have been considerable.

[21] Longevity’s unreasonable refusal of this first *Calderbank* offer warranted increasing the notional starting tariff by \$362.50, so that it reached the level of the full amount of legal costs Mr Williams had actually incurred.

[22] If Mr Williams’ actual legal costs had been more than \$6,612.50, then the increase to the notional starting tariff would have been substantially higher. However, a higher increase to the notional starting tariff could not be imposed, because the maximum Mr Williams could be awarded in costs was the amount of legal costs he had actually incurred, i.e. \$6,612.50.

What costs and disbursements has Mr Williams been awarded?

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

- (a) \$6,612.50 GST inclusive, as a contribution towards his actual legal costs;⁵ and
- (b) \$71.55, to reimburse his filing fee.

[24] Mr Williams' claim for reimbursement of his parking costs for himself, his wife and his advocate was not successful, as parties must bear their own costs associated with attending an investigation meeting.

Rachel Larmer
Member of the Employment Relations Authority

⁵ This is the total amount Mr Williams has been invoiced for his substantive claim.