

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 313  
3293880

BETWEEN HAYDEN STEWART  
Applicant  
AND PULSE 2012 LIMITED t/a  
BROWNE ST  
Respondent

Member of Authority: Eleanor Robinson  
Representatives: Alex Kerjes, advocate for the Applicant  
Grant Hodges, representing the Respondent  
Submissions received: 28 May 2025 from the Applicant  
3 June 2025 from the Respondent  
Determination: 5 June 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 2 May 2025 [Determination [2025] NZERA 241] the Applicant, Hayden Stewart, was determined to have been unjustifiably dismissed by the Respondent, Pulse 2012 Limited t/a Browne St. (Pulse 2012).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and both parties have filed submissions in support of a costs application.

[3] The matter involved a one-day investigation meeting.

[4] Mr Kerjes on behalf of Mr Stewart is claiming the sum of \$7,000.00 plus disbursements. This sum consists of the notional daily tariff in the Authority of \$4,500.00 for a one day investigation, and an uplift on the basis of the respondent's refusal to provide requested CCTV footage during the disciplinary process and a Calderbank offer, that is a without prejudice save as to costs offer.<sup>1</sup>

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<sup>1</sup> *Calderbank v Calderbank* [1976] Fam 93 (CA)

[5] Mr Kerjes submits that Mr Stewart made the Calderbank offer on 13 May 2024 in the sum of \$12,000 plus a contribution to costs of \$4,000.00, however Pulse 2012 did not respond to the Calderbank Offer.

[6] Mr Grant submits on behalf of Pulse 2012 that it provided the CCTV footage on several occasions to Sacked Kiwi as Mr Stewart's representative and it failed to view it. As such any failure by Mr Stewart to view the CCTV footage it is not attributable to any failing on its part.

[7] Pulse 2012 submits that it did respond to the Calderbank Offer but it did not accept it.

### *Principles*

[8] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

#### **15 Power to award costs**

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[9] Costs are at the discretion of the Authority<sup>2</sup>. The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)*<sup>3</sup>.

[10] It is a principle set out in *Da Cruz* that costs are not to be used as a punishment. It is also a principle that costs are discretionary and awards made are consistent with the Authority's equity and good conscience jurisdiction.

### **Costs Award**

[11] Mr Stewart was successful in his claims before the Authority, however the amount awarded to him was reduced for his contribution to the situation which gave rise to his termination of employment.

[12] Turning to the Calderbank Offer it is necessary to consider what effect it should have upon the award of costs in this matter.

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<sup>2</sup> *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622

<sup>3</sup> *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808

[13] The Calderbank offer was made well in advance of the Investigation Meeting and before the parties would have needed to incur any preparation costs for the investigation meeting. It offered to settle the matter at a sum which was less, but not significantly less than Mr Stewart was ultimately awarded in the Authority's determination given the reduction for contribution.

[14] On that basis, whilst I grant an uplift on the basis of the Calderbank Offer because such an offer represents an opportunity for parties to settle the matter prior to incurring any litigation costs, the uplift reflects the final decision in the Authority determination,

**[15] I order Pulse 2012 to pay Mr Stewart the sum of \$5,500.00 as costs. Mr Stewart is also to be paid the sum of \$200.00 as disbursements.**

**[16] Pulse 2012 is ordered to pay Mr Stewart the Authority filing fee in the sum of \$71.55.**

Eleanor Robinson  
Member of the Employment Relations Authority