

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 359
3267699

BETWEEN	LEKEISHA RAMSAY Applicant
AND	NATIONAL STORAGE LIMITED Respondent
	REBECCA JAMES Second Respondent
	MONISH NAIR Third Respondent

Member of Authority: Antoinette Baker

Representatives: Lawrence Anderson, advocate for the Applicant
John Rooney, counsel for all Respondents

Submissions received: 26 May 2025 from the Applicant
9 June 2025 from the First, Second and Third
Respondents

Date: 19 June 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] In a Determination dated 14 May 2025¹ (my Determination), I found the first respondent (NS) unjustifiably dismissed Ms Ramsay and awarded her compensation of \$10,000.00 reduced by 10% for her contribution to the grievance being \$9,000.00; lost wages of \$14,040.40 gross (without reduction) and left the parties to calculate any lost 'Kiwi Saver' contribution.²

¹ *Ramsay v National Storage Limited & Ors* [2025] NZERA 269.

² Employment Relations Act 2000, s123(1)(c)(i); s123(1)(b); s124.

[2] I dismissed Ms Ramsay's claim for a penalty under s 134 of the Employment Relations Act 2000 (the Act) based on a breach of good faith as an implied contractual term of the individual employment agreement, and as such dismissed both claims for penalties against the second and third respondents respectively under s 134(2) of the Act for 'aiding and abetting' the breach claims against NS.

[3] The issue of costs was reserved. The parties were encouraged to resolve costs themselves. They have not been able to do so. This Determination deals only with the issue of costs.

Costs principles

[4] The Authority may order costs to any party as the Authority thinks reasonable, usually to a party achieving success in their claim. Costs are discretionary, modest, and are not a mechanism to punish the other party. Some cases may require costs to lie where they fall. The Authority operates on a starting point tariff being \$4,500.00 for a single investigation meeting day which takes into account reasonable preparation for a straightforward matter but not including attendance at mediation. The tariff is set \$3,500.00 for any subsequent days. A half subsequent day calculates at \$1,750.00.³

Consideration of Ms Ramsay's claim for costs against NS

What costs are to be awarded at the tariff?

[5] This matter commenced with a day long investigation meeting on 3 October 2024 in Auckland which proved to be insufficient time to complete hearing from all witnesses and oral submissions. Once the parties agreed to a continued date, the meeting concluded with a half day on 8 November 2024 by AVL. This was to complete hearing evidence from Ms James, from Mr Nair, and then hear oral submissions from the representatives based on any written synopsis to be lodged just prior to the continued meeting to assist my preparation. My Directions at the time included that this request

³ <https://www.era.govt.nz/determinations/awarding-costs-remedies#awarding-and-paying-costs-1>; <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>

was prompted by Mr Anderson indicating at the end of the first investigation meeting that he had 13 pages of submissions prepared.⁴

[6] Ms Ramsay seeks a contribution to her costs from NS based on the Authority's current daily tariff (\$8,000.00) for 'two days' taking into account the second half-day investigation meeting together with timetabled written submissions and 'further memoranda required to provide more information to the Authority.' NS says the starting point should be one and a half days. I agree. As noted above, oral submissions were heard at the continued hearing with a synopsis requested. I consider this part of the reasonable preparation for the investigation process as including in the tariff. The further memoranda, as I take it, relates to my request after the investigation meeting. This was to provide some written emailed responses to my questions about aspects of evidence that would have required the parties themselves to effectively answer. I do not consider this reasonably extends the investigation process by a half day.

[7] Accordingly, I find a starting point is \$6,250.00. To this it is reasonable to add Ms Ramsay's filing fee of \$71.55 as claimed.

Is there to be an uplift to the starting point?

[8] Ms Ramsay claims a \$4,000.00 uplift to the tariff due to NS's rejection of an offer to settle her claims on the basis of 'without prejudice save as to costs' because the offer was less than the total that NS was ordered to pay Ms Ramsay in my determination. The offer dated 1 May 2024 was to settle matters by payments of '\$6,000.00 plus GST' representing a payment directly to Ms Ramsay's advocate (I take it company) and \$10,000.00 'in terms of s123(1)(c)(i) of the Act' both expressed to be within 7 days with an offer of drafting paperwork 'promptly'. I take this to have been a settlement agreement of some sort.

[9] This was not a situation where Ms Ramsay did not receive a response to her offer. A counter-offer was for a single payment of \$10,000.00 representing compensation. Further emails indicate a dispute about paying the costs part of the offer

⁴ Directions of the Authority dated 4 October 2024 at [4].

directly to Ms Ramsay's advocate but eventually there was a reiteration of the NS position that the single offer of \$10,000.00 stood.

[10] Invoices for Ms Ramsay's costs show me that by the time of this offer she had (excluding mediation reparation and attendance costs⁵) incurred \$3,000.00 plus GST, \$3,450.00. Consequently, while her offer to settle at this stage was rejected, Ms Ramsay in pursuing her claim achieved compensation of \$9,000.00 which would have been \$10,000.00 but for contribution reduction, and costs of \$6,250.00 plus the filing fee. My consideration is whether the Calderbank has put her in a worse off position to the offer made. I consider it has not based on where things were at for her at the time of the offer. I find this does not support an uplift to the above calculated tariff.

[11] I order NS to pay Ms Ramsay \$6,250.00 as a contribution to her costs together with the \$71.55 filing fee.

Consideration of applications for costs from Ms James and Mr Nair

[12] The second respondent, Ms James, and the third respondent, Mr Nair further claim respectively a contribution to their legal costs in successfully defending Mr Ramsay's claims against them each personally for penalties under s 134(2) of the Act. As noted above I dismissed these claims due to finding that the primary liability against NS for breach of s 134 of the Act could not be supported.⁶ It is submitted for Ms James and Mr Nair that the claims were without merit. To an extent I agree with that submission. Ms James and Mr Nair attended fully the one and a half day Investigation Meeting although it could have been expected their evidence would not have been required for that full time. I have been provided with two invoices to the same counsel for NS being \$5,000.00 each plus GST for attendance at the investigation with a submission that at least \$5,000.00 each should be paid as a costs contribution by Ms Ramsay. This would result in a contribution by Ms Ramsay of \$10,000.00 which is out of all proportion to her compensatory payments for unjustified dismissal and the Authority's approach to modest awards. I find support for considering this would be too high when I consider the submission for Ms Ramsay that the evidence of both Ms

⁵ Not costs included in the Authority tariff 'preparation' component. See note 3 above.

⁶ As above at noted 1, [67] to [70].

James and Mr Nair overlapped with the position of NS that it was justified to end Ms Ramsay's employment. Both were involved in that process to the extent that, particularly with Ms James, the involvement was almost exclusive.

[13] Ms Ramsay opposes these cost claims and on her behalf I am referred to a prior Authority Determination⁷ saying it could not be right that parties having 'common interests' in the same successfully raised defence could be awarded separate costs. It is further put forward for Ms Ramsay that the second and third respondents were represented by the same counsel and were 'inextricably linked to the successful claims that the Authority made out for unjustifiable dismissal. It was substantially the same defence and was overlapping with the first respondent.' I note as well for Mr Nair and Ms James it is submitted that there have been more recent situations where the Authority has considered it appropriate to award costs when separate claims are made against respondents that are unsuccessful.⁸ None are factually the same as the present.

[14] I accept the submission for Mr Nair that his evidence for NS was largely more peripheral than Ms James, and he may not have appeared as a witness for NS had he not been named personally as a respondent. I find it likely that Ms James would likely been someone whose witness evidence would have been required by NS in its position of justification. To that end while I accept some preparation and attendance would have been required for both in their personal capacities, NS produced no other witnesses. It is difficult (having heard the matter substantively) to see who else could have been witnesses. This coupled the same representation for both Ms James and Mr Nair, and that costs awards are modest in this jurisdiction, I find it reasonable that Ms Ramsay contributes \$2,000.00 to Mr Nair's costs and \$800.00 to Ms James' costs.

[15] Within 28 days of the date of this Determination:

- a. National Storage Limited, the first respondent is to pay Lekeisha Ramsay \$6,250.00 towards her costs and \$71.55 for the filing fee;
- b. Lekeisha Ramsay is to pay Rebecca James \$800.00 towards her costs as second respondent;

⁷ *ISO v Kena and anor* [2014] NZERA Auckland 297.

⁸ *Baker v Hauraki Rail Trail Ltd* [2020] NZERA 164.

- c. Lekeisha Ramsay is to pay Monish Nair \$2,000.00 towards his costs as third respondent.

Antoinette Baker
Member of the Employment Relations Authority