

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 387
3287539

BETWEEN TAMMY MAXINE STEVENSON
Applicant

AND MOUNTAIN CHALETS (2005) LIMITED
First Respondent

AND KYLE JAMES PURTON
Second Respondent

AND HAYLEY-LAURA CURTIS
Third Respondent

Member of Authority: David G Beck

Representatives: Lawrence Anderson, advocate for the Applicant
Amy Keir, counsel for the Respondents

Investigation Meeting: On the papers

Submissions Received: 27 May 2025 from the Applicant
10 June 2025 from the Respondents

Date of Determination: 2 July 2025

COST DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] By way of a determination of 5 May 2025¹ the Authority found that Tammy Stevenson did not establish an unjustified dismissal claim or any actions against the second and third respondents. However, Ms Stevenson did establish a claim that she had been unjustifiably disadvantaged and an award of \$8,000 compensation was made and a direction

¹ *Tammy Maxine Stevenson v TM & Mountain Chalets (2005) Limited & Ors* [2025] NZERA 248.

to calculate and provide Ms Stevenson with arrears of holiday pay was made. Both the compensatory award and direction were made against Mountain Chalets (2005) Limited (MCL).

[2] Costs were reserved. The parties were encouraged to seek agreement on costs but have not done so.

The application for costs

[3] Ms Stevenson's advocate seeks costs in the amount of the Authority's notional daily rate of \$4,500.00 for the first day of the investigation meeting and \$3,500 for the second day and disbursements (the \$71.55 Authority filing fee and \$150 printing costs). The investigation meeting took one day with a further hour on the second day and legal submissions were timetabled.

[4] In contrast, MCL's counsel noted that Ms Stevenson was only partially successful against MCL and unsuccessful in joining the second and third respondents. Counsel suggested there was no unusual features to disturb the application of a notional daily rate approach the Authority normally adopts and gave two options – 1) a daily rate not exceeding \$5,000 or 2) consideration of the mixed success and lack of any success against the second and third respondent as warranting a conclusion costs should lie where they fall.

Cost Principles

[5] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Act. The discretion it is accepted is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² including those costs are not to be used as a punishment or as a reflection on how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.³ As outlined in the substantive determination,⁴ the Authority's approach is to apply a notional daily rate and only adjust this if persuaded that particular circumstances or

² *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

³ Section 160(2) Employment Relations Act 2000.

⁴ At n 1.

other factors require an upward or downward movement. The current Authority notional daily rate is \$4,500 for the first day of an investigation meeting.

[6] An issue is whether I should adjust the notional daily rate the Authority usually applies to reflect Ms Stevenson's mixed success and/or take account of the fact that the claims against the second and third respondents were wholly unsuccessful.

The dilemma of 'mixed success'

[7] To assess costs where one party as is here has only mixed success can be problematic. It is arguable that Ms Stevenson's success was partial and compensation modest as she failed to establish her predominant claim that she had been unjustifiably dismissed from what I found was a permanent role.

[8] However, Judge Smith in *William Coomer v JA McCallum and Son Limited* has noted (omitting citations):

Where both parties have had a measure of success determining which of them is entitled to costs is often a nuanced assessment of competing considerations. In *Weaver*, the Court said that the appellants were the only party to have succeeded by any 'realistic appraisal'. That conclusion followed because they obtained a monetary award It was immaterial that they had not succeeded to the full extent of their claim because' ... success on more limited terms is still success.⁵

Assessment

[9] A starting point is that costs normally follow the event and as Ms Stevenson was partially successful in her personal grievance claims she is entitled to consideration of an award of costs. The suggestion that costs lie where they fall is an unrealistic submission given little time was spent on dismissing the claims against the second and third respondents, who as MCL company directors, were required to be involved in the investigation meeting. While Ms Stevenson's 'mixed success' is apparent, the findings and orders made in her favour were significant and included directing MCL to calculate minimum holiday entitlements. It would be inequitable to expect Ms Stevenson to not recover some level of costs but given the length of the investigation meeting and the fact that I had sought submissions on the day and this should have not extended the meeting I will take a modest approach.

⁵ *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC at [37] – [43].

Applying the daily rate

[10] Taking all the factors identified in submissions into account and applying the Authority's discretion I consider that Ms Stevenson is entitled to a cost contribution for the one day and an hour the following day, investigation meeting. I fix that amount at \$5,000.00. As is the Authority's approach that without compelling circumstances being made out, I do not award any disbursements other than the Authority filing fee.

Order

[11] Mountain Chalets (2005) Limited is to pay Tammy Maxine Stevenson a contribution to her costs in the amount of \$5,000.00 and \$71.55 as reimbursement of the Authority filing fee.

David G Beck
Member of the Employment Relations Authority