

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 430
3157602

BETWEEN	RAJENDRA CHAUHAN First Applicant
AND	HEM LATA CHAUHAN Second Applicant
AND	SD & SD INVESTMENTS LIMITED First Respondent
AND	PRATAP KOLLURU Second Respondent
AND	SREE DEVI KOLLURU Third Respondent

Member of Authority:	Nicola Craig
Representatives:	Amy De-La Cruz, advocate for the applicants Pratap and Sree Devi Kolluru for the respondents
Submissions received:	26 June 2025 from the applicants Nothing received from the respondents
Determination:	18 July 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Authority issued a determination about Rajendra and Hem Lata Chauhan's employment with SD & SD Investments Limited (SD or the company).¹ SD was found to have unjustifiably dismissed Mr Chauhan with remedies awarded. The company was found to have acted unjustifiably in disadvantaging Ms Chauhan and was required to

¹ *Chauhan & Chauhan v SD & SD Investments Ltd & Kolluru & Kolluru* [2025] NZERA 309.

pay her wage arrears and compensation for the grievance. That determination followed two earlier ones.² Costs were reserved in all determinations.

[2] The parties were encouraged to resolve any question of costs between themselves but were unable to do so. Submissions were received on behalf of the Chauhans. Nothing was received for SD.

The Chauhans' costs application

[3] The Chauhans seek an award of costs against SD. Their starting point is at least 5.5 tariff days, covering the investigation meeting days for the first and third determinations and half a day in lieu of submissions and a case management conference for the second determination:

Day	Description	Rate	Amount
Day 1	First hearing day	\$4,500	\$4,500
Days 2 - 5	Remaining 4 days	\$3,500/day	\$14,000
Half day	Remaining half day	\$1,750	\$1,750
Total			\$20,250

[4] Then an increase is sought for a *Calderbank* offer to settle costs for \$15,000 with no response received on behalf of SD.

[5] Further uplifts are sought for the cumulative effects of:

- extended proceedings for over three years
- procedural missteps by the respondents – changes of representatives twice resulting in loss of continuity and inefficient engagement with the Authority
- strategic obstruction through bankruptcy tactics – announcing bankruptcy close to investigation meeting, requiring urgent second determination to resolve jurisdictional uncertainty

² *Chauhan & Chauhan v SD & SD Investments Ltd & Kolluru & Kolluru* [2023] NZERA 369 and *Chauhan & Chauhan v SD & SD Investments Ltd & Kolluru & Kolluru* [2024] NZERA 295.

- multiple mediations without progress – including unrealistic positions and unwillingness to resolve matters
- rejection of the *Calderbank* offer referred to above
- unsuccessful appeal to Employment Court after preliminary determination – contributing to fragmentation and extension of litigation without advancing the respondents’ case in any meaningful way.

[6] The Chauhans suggest an uplift of 25% to 30% on \$20,250 would be appropriate – a range from \$25,000 to \$30,000.

SD’s response

[7] The company has not provided a response.

The Authority’s costs principles

[8] The Authority has the power to award costs.³ This power is discretionary but must be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* principles guiding the Authority’s approach to costs are outlined including:

- The statutory jurisdiction to award costs is consistent with the Authority’s equity and good conscience jurisdiction
- Equity and good conscience is to be considered on a case by case basis
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party’s conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award
- Costs generally follow the event
- Awards will be modest
- Frequently costs are based on a notional daily tariff.⁴

Costs analysis

[9] Three determinations were issued prior to this one:

- A preliminary determination that the Chauhans were employees of SD⁵

³ Employment Relations Act 2000, Schedule 2, cl 15.

⁴ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

⁵ *Chauhan & Chauhan v SD & SD Investments Ltd & Kolluru & Kolluru* [2023] NZERA 369.

- A second determination which decided that in the absence of High Court permission, the claims regarding the Kollurus were halted due to their bankruptcies⁶
- The third determination concluding that both Chauhans had grievances against SD.

Tariff established

[10] The starting point is determining the tariff based on the length of the investigation meeting. The notional daily tariff allows for \$4,500 for the first day and \$3,500 for subsequent days.

[11] Here the first investigation meeting on the preliminary issues was held in person for three days with evidence completed by audio-visual link on a fourth day. The in person days included an early and a late finish, whereas the session by audio-visual link was less than half a day. Taking all that into account I allow 3.5 days.

[12] The second determination was undertaken on the papers but I do not consider that the Chauhans can be considered the successful party there. The Kollurus' then representative indicated that he did not consider the matters against them could proceed as they were bankrupted and there was no High Court approval. The Chauhans did not believe the Kollurus were genuinely bankrupted and thought they were attempting to evade their responsibilities. They sought a determination that the matters against the Kollurus could go ahead. The determination found those matters could not proceed.

[13] The investigation meeting for the third determination was held over two days, the first in Hamilton in person and a short second day by audiovisual link. I allow another 1.5 days.

[14] Five days equates to \$4,500 for the first day and \$3,500 times four for the remaining days, giving a total of \$18,500.

Modest uplift justified

[15] There are several suggested bases for uplifts which are not strong. The Authority is not well positioned to make assessments of the appropriateness or otherwise of the approach the respondents took at mediation.⁷

⁶ *Chauhan & Chauhan v SD & SD Investments Ltd & Kolluru & Kolluru* [2024] NZERA 295.

⁷ The Act, s 148 (confidentiality).

[16] Also the Court is the appropriate place to seek costs regarding Court processes, rather than the Authority.

[17] Seemingly the only *Calderbank* offer was made after the third determination. By that point all the costs incurred by the Chauhans were already incurred other than regarding costs submissions. Given costs are not usually awarded regarding the preparation of costs submissions and the costs submissions were not especially complex, the *Calderbank* offer is of little impact.

[18] Some of the time taken in getting this proceeding completed related to health issues for the Kollurus about which general practitioner and hospital documentation was provided.

[19] I do accept however, that at other times, such things as failures to communicate, late or unclear communications and late provision of documents likely added unreasonably to the Chauhans' costs.

Outcome

[20] Standing back and looking at the justice of the matter overall I consider that the Chauhans should receive an award of costs of \$21,000,00.

Orders

[21] I order that SD & SD Investments Limited to pay Rajendra Chauhan and Hem Lata Chauhan within 28 days of the date of this determination:

- \$21,000.00 as a contribution to their costs; and
- \$71.55 for the Authority's filing fee.

Nicola Craig
Member of the Employment Relations Authority