

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 440  
3306201

BETWEEN

JOSH SOARES  
Applicant

AND

THE SALVATION ARMY NZ  
TRUST  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Simon Mitchell K.C., counsel for the Applicant  
Alan Davies, counsel for the Respondent

Submissions received: 22 July 2025 from the Applicant  
27 June 2025 from the Respondent

Determination: 23 July 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 30 May 2025 [Determination [2025] NZERA 306] the Applicant, Josh Soares, was determined not to have been unjustifiably dismissed or unjustifiably disadvantaged by the Respondent, The Salvation Army NZ Trust (TSA).

[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 Davis, on behalf of TSA, is claiming the sum of \$8,975.75 plus disbursements of \$442.40. The disbursements sum is in respect of travel and accommodation costs to the Investigation Meeting.

[5] Mr Mitchell on behalf of Mr Soares submits that the disbursements costs which relate to TSA having engaged out of town council are properly costs that should lie with it.

## *Principles*

[6] 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.

[7] Costs are at the discretion of the Authority<sup>1</sup>. The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)*<sup>2</sup>.

[8] 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**

[9] TSA was the successful party and costs normally follow the event. The notional daily tariff in the Authority for a one-day investigation is \$4,500.00.

[10] There are no grounds presented in support of an uplift in costs and therefore I take the daily tariff as the appropriate costs award for this matter. This was a not a complex matter, and there are no factors justifying an uplift above the notional daily rate.

[11] In regard to the disbursements claimed, I note that it is a matter for a party whom it chooses to represent it (or indeed whether or not to have representation), but it is not usual for the Authority to grant costs in request of a party's representative's travel and accommodation costs.

[12] **I order Mr Soares to pay TSA the sum of \$4,500.00 as costs.**

Eleanor Robinson  
Member of the Employment Relations Authority

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<sup>1</sup> *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622.

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