

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI Ā TARA ROHE**

[2025] NZERA 47  
3271579

BETWEEN	JULIANNE JOHNSON First Applicant
AND	MAX JOHNSON Second Applicant
AND	ARMER FARMS (N.I.) LIMITED Respondent

Member of Authority: Shane Kinley

Representatives: Julianne Johnson, for the Applicants  
Jeremy Sparrow, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and further information: Up to 15 November 2024

Determination: 29 January 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] In a determination dated 01 October 2024 I found Julianne Johnson and Max Johnson were not employees of Armer Farms (N.I.) Limited (AFL) and I therefore did not have jurisdiction to consider further other issues raised by the Johnsons (the substantive determination).<sup>1</sup>

[2] In the substantive determination costs were reserved in the hope that the parties would be able to settle this issue between themselves.<sup>2</sup> Unfortunately, they have been

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<sup>1</sup> *Johnson and Johnson v Armer Farms (N.I.) Limited* [2024] NZERA 576 at [42].

<sup>2</sup> *Ibid* at [43].

unable to do so, and AFL has sought an award of costs against the Johnsons and a company owned by the Johnsons, M & J Contracting Ltd (M&J), which was the originally named applicant in relation to this matter. The Johnsons' response included that no award of costs should be made in favour of AFL.

[3] The substantive matter was also determined on the papers. I indicated in the substantive determination my preliminary view that tariff costs based on a half day hearing was appropriate.<sup>3</sup>

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **Contribution to Costs**

[5] The power of the Authority to award costs is contained in cl 15 of schedule 2 of the Act. The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.<sup>4</sup>

[6] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[7] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*<sup>5</sup> as confirmed in *Fagotti v Acme and Co Limited*<sup>6</sup>. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful party's conduct.

### *Submissions*

[8] AFL sought an award of costs of \$4,500 against the Johnsons and M&J, "in whatever allocations the Authority thinks fit", reflecting a half day's costs of \$2,250

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<sup>3</sup> Ibid at [45].

<sup>4</sup> For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

<sup>5</sup> [2005] 1 ERNZ 808.

<sup>6</sup> [2015] NZEmpC 135 at 114.

based on the daily tariff with an uplift of 100 per cent or a further \$2,250. AFL said this was appropriate to reflect:

- (a) AFL having warned M&J these proceedings were not related to an employment relationship and, if proceedings commenced, then increased costs would be sought. AFL said the substantive determination demonstrated its position was correct;
- (b) AFL said M&J's original statement of problem drafted as based on an employment relationship between two companies was "always clearly wrong" and put AFL to extra costs of raising this issue in its statement in reply, addressing it during a case management conference, and reviewing and responding to the Johnsons' amended statement of problem (ASoP) including lodging an amended statement in reply;
- (c) The Johnsons' ASoP did not comply with my direction to address only preliminary issues, which increased AFL's costs;
- (d) The Johnsons' failure to seek legal advice, which I had recommended they do, increased AFL's costs as AFL said this "contributed significantly to the issues with the applicants' approach to pleadings, evidence and submissions filed";
- (e) The Johnsons' approach to evidence and submissions raised AFL's costs and meant it had to raise objections with the Authority; and
- (f) The Johnsons' "claim had no merit, it was not supported by its own evidence, and it was contrary to widely accepted employment case law".

[9] Email replies from the Johnsons repeated points raised in relation to the substantive determination about the contract between M&J and AFL having been a "sham contract" which the Johnsons had every right to challenge, with the Johnsons claiming to have lost a significant amount setting up M&J for that contract. Reference was made to pleading hardship, costs being awarded to the Johnsons and a settlement being awarded to the Johnsons based the contract agreement, with costs for damages to the Johnsons also sought.

[10] Information was also provided about related Tenancy Tribunal proceedings, High Court proceedings and an application to liquidate M&J, with a potential future District Court proceeding referred to.

## *Analysis*

[11] In the substantive determination I indicated my preliminary view that tariff costs based on a half day hearing was appropriate.<sup>7</sup> AFL did not dispute this starting point rather focussed on the reasons why an uplift was appropriate. The Johnsons did not directly address whether a different starting point was appropriate. I proceed on the basis the starting point for this matter should be a half day hearing or \$2,250.

[12] In the substantive determination I recorded in relation to objections from counsel for AFL to the format and scope of the Johnsons submissions and evidence that I had made directions on the format and scope of evidence and submissions. I also recorded my advice to counsel for AFL “they did not need to respond to material which they did not consider relevant to the preliminary issues”.<sup>8</sup>

[13] The directions I made were not followed by the Johnsons and undoubtedly increased costs for AFL. I consider it appropriate to allow for a modest uplift to reflect this however not to the extent sought by AFL, as my directions were clear that I was only considering the preliminary issue of whether the real nature of the relationship between the Johnsons and AFL was an employment relationship or not. In the circumstances I consider an uplift of 50 per cent is appropriate to \$3,375.

[14] I have also considered whether the Johnsons reference to pleading hardship and information provided about the application to liquidate M&J are sufficient for me to consider reducing any award of costs on the basis of the Johnsons’ ability to pay. I do not consider sufficient evidence has been provided to make any adjustment on this basis.

[15] Finally, I do not consider any order should be made against M&J in relation to costs as the substantive determination proceeded on the basis of the ASoP to determine whether the real nature of the relationship between the Johnsons and AFL was an employment relationship or not. This reflected discussion at a case management conference over who the Johnsons claimed were in an employment relationship with AFL. Having clarified in the ASoP that the Johnsons rather than M&J were the applicants, I do not consider it appropriate to make an order of costs against M&J.

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<sup>7</sup> Above n1 at [45].

<sup>8</sup> Ibid at [12].

## **Orders**

[16] Julianne Johnson and Max Johnson are jointly and severally ordered to pay to Armer Farms (N.I.) Limited within 28 days of the date of this determination the sum of \$3,375 as a contribution to costs.

Shane Kinley  
Member of the Employment Relations Authority