

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 477
3292839

BETWEEN

THOMAS FREW
Applicant

AND

OAKLEY'S WINDOWS & DOORS
LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Damien Pine, counsel for the Applicant
Linda Mathieson, advocate for the Respondent

Investigation Meeting: On the papers

Submissions Received: 14 July 2025 from the Applicant
28 July from the Respondent

Date of Determination: 5 August 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Following a half day investigation meeting held on 19 May 2025 and thereafter timetabled submissions the Authority in a Determination of 16 June 2025, held that Thomas Frew was unjustifiably disadvantaged in his ongoing employment relationship. Oakley's Windows and Doors Limited (Oakley's) was ordered to pay Mr Frew \$9,000 compensation pursuant to section 123 (1)(c)(i) of the Employment Relations Act 2000 (the Act) and to reimburse Mr Frew his relevant daily pay for all public holidays that had fallen and not been paid for, throughout the employment period.¹

¹ *Thomas Frew v Oakley's Windows & Doors Limited* [2025] NZERA 338.

The application for costs and response.

[2] In a memorandum of 14 July 2025, Mr Frew's counsel sought full indemnity costs of \$19,487.16 that included the costs of attending mediation on 16 September 2024. In seeking indemnity costs, Mr Frew's counsel cited and included a copy of a rejected Calderbank offer made earlier on 15 February 2024. As an alternative, while acknowledging the Authority's normal approach of applying a notional daily rate had a starting point of \$2,500 counsel suggested a substantial uplift to \$14,500 be considered due to the rejected Calderbank offer.

[3] Ms Mathieson provided a costs submission indicating with supporting documentation that Oakley's was struggling with profitability issues and suggested an award be limited to the notional daily tariff without an uplift.

Assessment

The Authority's costs approach

[4] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000.

Costs for Mr Frew

[5] A starting point is that costs normally follow the event and as Mr Frew was successful in his personal grievance and obtained compensatory remedies and reimbursement of statutory entitlements an award of costs is appropriate.

Applying the daily rate

[6] The Authority's approach is to apply a notional daily rate and only adjust that rate if persuaded that circumstances or other factors require an upward or downward adjustment.² The current daily rate is \$4,500 for the first full day of an investigation meeting.

² For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

Adjusting the daily rate

[7] Given the investigation meeting was less than a day (concluding at 12:30pm) I would normally consider applying a proportion of the normal daily rate but I accept an upward adjustment is warranted as part of the orders in favour of Mr Frew related to unpaid statutory entitlements. I, however, do not see any unusual elements or unique features of Mr Frew's situation that would justify an award of full indemnity costs.

Impact of settlement offer.

[8] The making of an offer of settlement in the form of a *Calderbank* offer (without prejudice except as to costs) is at times a relevant factor to be weighed when considering costs where such does not better the award made by the Authority. Here a modest settlement amount was offered (\$5,000 compensation and a \$1,500 plus GST costs contribution) in a timely fashion on 15 February 2024.

[9] Ms Mathieson for Oakley's contended that at the time the *Calderbank* offer to settle was made the full extent of Mr Frew's claims including the unpaid public holidays had not been made out and at the time Mr Frew was seeking to have a dispute about redundancy resolved and the wider claims did not crystallise until an amended statement of problem was filed in the Authority on 11 February 2025. I observe while there is some force in this argument it is apparent that settlement at the point of the *Calderbank* offer was in hindsight very attractive to Oakley's given in the final outcome Mr Frew's compensation was over double the offer and in the interim both parties incurred what could be described as unnecessary costs. No counter settlement offer was made.

[10] Whilst generally the Authority has a low-level jurisdiction hence a focus on a notional daily rate for awarding costs, there is authority to suggest a 'steely' approach to *Calderbank* offers is sometimes required in the broader public interest.³ The Employment Court has held that a *Calderbank* offer sometimes leads to an uplift in costs for the successful party seeking

³ *Bluestar Print Group (NZ) Ltd v Mitchell* [2010] NZCA 385.

such to encourage early settlement and the Authority has likewise approached costs in a similar vein.⁴

[11] I intend to consider the timely Calderbank offer made by Mr Frew. It was offered to settle at an early stage of litigation and then Mr Frew succeeded in litigation in significant excess of the settlement offer. An uplift in the normal daily rate is warranted and in all the circumstances, I consider it equitable to award Mr Frew an enhanced daily rate of \$3,500 to take account of the time for submissions and an uplift of \$2,000 to take account of the rejected settlement offer.

Order

[12] Oakley's Windows & Doors Limited is to pay Thomas Frew a contribution to legal costs in the amount of \$5,500.00 net and to reimburse Mr Frew the Authority filing fee of \$71.55. within 28 days of this determination being issued.

David G Beck
Member of the Employment Relations Authority

⁴ *Stevens v Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 137 at [24].