

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 499
3356363

BETWEEN MARITIME UNION OF NEW
 ZEALAND INCORPORATED
 Applicant

AND QUBE PORTS NZ LIMITED
 Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Simon Mitchell KC and Angus Drumm, counsel for the
 Applicant
 Alastair Espie and John Gray-Smith, counsel for the
 Respondent

Investigation Meeting: On the papers

Submissions Received: 30 June 2025 by the Respondent
 11 July 2025 by the Applicant

Date of Determination: 18 August 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 5 June 2025 the Authority dismissed Maritime Union of New Zealand Incorporated’s claims against the respondent. As part of this determination, the Authority reserved its decision on costs. A timetable was set to for memoranda to be filed if the parties were unable to resolve the issue of costs between themselves. On 30 June 2025 Qube Ports NZ Limited filed and served a memorandum asking the Authority to make a further determination for an award of costs against MUNZ. More specifically, the respondent sought the following:

- (a) A contribution of costs in the sum of \$24,000 (against actual legal costs of \$56,026.50 excluding GST);

- (b) Travel and accommodation costs in respect of counsel's travel and accommodation of \$1,054.71 (inclusive of GST);
- (c) Expert witness costs of \$37,093.95 which include Mr Seawright's flights and accommodation.

[2] MUNZ in response states costs ought to lie where they fall and in saying so, says the matter was clearly one of a bargaining dispute between the parties in reliance on 6V of the Authority's practice direction in respect of costs.

[3] In the alternative, MUNZ states that if costs weren't to lie where they fell, then the notional daily tariff is the appropriate approach.

The respondent's case for increased costs

[4] Qube starts by submitting that the starting point in considering costs is the daily tariff. It notes that the current tariff is \$4,500.00 for the first day of any matter and \$3,500.00 for any subsequent day of the same matter. It submits that the current matter should be treated as a matter taking two days on the basis it was originally set down for a two day investigation meeting and although the examination of witnesses concluded on day one, the second day was fully utilised by all parties preparing and revising submissions that were filed under urgency. It submits that the number of witnesses and the preparation involved was comparable to what would ordinarily be expected for a two day investigation meeting. On that basis it says the starting point in applying the daily tariff ought to be \$8,000.00.

[5] Qube submits that a 200 percent uplift to the daily tariff is warranted. It says MUNZ caused unnecessary and significant additional costs. It says these include the claim that bargaining was undermined as the result of non-Union members being offered a higher rate of pay and then withdrawing the claim one working day before Qube was required to file its evidence. It says that the late raising of a new claim on 4 April 2025 alleging that Qube had breached good faith through a communication to non-Union members dated 21 March 2025 also caused additional costs.

[6] Amongst other concerns, Qube says that MUNZ's initial failure in refusal to provide an undertaking as to damages also resulted in further costs. It says that in applying a 200 percent uplift, costs are \$24,000.00.

[7] Qube also submits that travel and accommodation costs, together with expert witness costs, should be paid for by MUNZ. It submits the case was significant and important for both parties, was complex, and it was necessary to have an expert witness because MUNZ had called one.

[8] As a result of its submissions, Qube seeks orders requiring MUNZ to pay:

- (a) A contribution of costs of \$24,000.00; and
- (b) Disbursements of \$38,148.66.

MUNZ's position

[9] As referred to above, MUNZ's view is that costs either lie where they fall on the basis the claims are essentially collective bargaining disputes or alternatively, the notional daily tariff is appropriate.

[10] MUNZ goes on further to submit that at the heart of issues were matters of health and safety. It is submitted this was not a situation where the Union vexatiously applied to the Authority without scientific evidence regarding the respondent's bargaining proposal. They had sought expert advice on the proposal which they submit made it clear that Qube's proposal was unsafe.

[11] MUNZ also takes issue with Qube's calculation of two days. The Union notes that it was prepared and willing to do submissions in person but that it was the respondent who wished to extend the time. Accordingly, they submit that should the daily tariff apply, then there should be costs for one day of hearing.

[12] In respect of the claim being dropped at a late stage, MUNZ submits that this would not have added significantly to the hearing. The evidence Qube had prepared would have been needed regardless.

Discussion

[13] Clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) gives the Authority the discretion to order any party to a matter to pay to another party such costs and expenses as the Authority thinks reasonable. As is already indicated, the Authority adopts a daily tariff as a starting point, from which relevant factors and principles may guide an upward or downward adjustment of the amount of costs

awarded. The current tariff for costs is \$4,500.00 for the first day of any matter and \$3,500.00 for any proceeding days.

[14] Relevant principles governing costs in the Authority include consideration of whether the conduct of the parties increased costs unnecessarily, warranting an adjustment up or down, without compromising the Authority's otherwise modest approach to costs.

[15] The investigation meeting reserving submissions, was completed within one day. If submissions had been given at the end of the investigation meeting, I consider it unlikely that this would have extended the investigation meeting more than an hour or so. Accordingly, I consider the starting point for any costs award is \$4,500.00 being the current tariff for the first day of any matter.

[16] I do not accept Qube's submission that the investigation meeting was prolonged as a result of the claim that bargaining had been undermined because of non-union members being offered a higher rate of pay which was then withdrawn. No time was spent on this during the investigation. Indeed, it seems this issue was settled between the parties, which is to be applauded.

[17] MUNZ's initial refusal to provide an undertaking as to damages has no cost implication. This issue arose because MUNZ had initially filed for an interim injunction but the parties reached an accommodation, removing the need for this application. It is difficult to understand how an undertaking as to damages under these circumstances was either necessary or effective. I do not see it as having any impact on costs.

[18] I accept that the claim contained in the amended statement of problem alleging Qube had breached good faith by communicating to non-union members did require a response at a late stage. However, although the claim did require evidence to be led, the correspondence spoke for itself, and I do not recall either party spending significant time on the claim and a defence to it.

[19] MUNZ raises the issue as to whether costs should lie where they fall. If the matter before the Authority was solely based on bargaining issues, then it is likely than an order would have been made that costs were to lie where they fall. However, some of the claims were not rooted in bargaining. The fact that the Authority intends making

a cost award in this case, compensates Qube for any additional costs it may have incurred by late notice of further claims.

Expert evidence

[20] Qube seeks reimbursement of its expert witness costs, including travel and accommodation costs.

[21] MUNZ sought expert advice because it felt it needed to understand, primarily from a health and safety perspective, what impact Qube's proposal in respect of a change to shifts, would have.

[22] It appears that because MUNZ had put forward its expert, Qube felt it needed to do the same. It must be said, that the expert evidence did not in essence disclose a conflict between the parties. Rather, there was a commonality in that both experts agreed that prior to making the change proposed by Qube in bargaining, a fatigue analysis would need to be undertaken.

[23] It seems to me that this issue is directly related to bargaining in that both sides were likely to have taken expert advice in promoting their differing starting points in relation to the shift issue, and accordingly the investment in expert knowledge will not be wasted.

[24] It follows, however, that I do not consider it appropriate that the disbursements incurred by Qube should be recovered from MUNZ. Likewise, if the positions had been reversed, the same would have applied in respect of MUNZ.

Outcome

[25] As Qube Ports NZ Limited was the successful party, it is entitled to a contribution towards its costs. I find no compelling reasons to start the assessment of costs outside the notional daily tariff of \$4500.00.

[26] Maritime Union of New Zealand Incorporated is ordered to pay costs of \$4,500.00 to Qube Ports NZ Limited within 28 days of the date of this determination.

Geoff O'Sullivan
Member of the Employment Relations Authority