IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE

[2025] NZERA 514
3315120

	BETWEEN	BARRY YOUNG Applicant
	AND	HEALTH NEW ZEALAND – TE WHATU ORA First Respondent
	AND	CHIEF EXEUTIVE OF THE MINISTRY OF HEALTH – MANATU HAUORA Second Respondent

Member of Authority:	Claire English
Representatives:	Barry Young in Person Rebecca Rendle for the First Respondent David Traylor for the Second Respondent
Submissions received:	28 July 2025 from Applicant 13 June 2025 from First Respondent 13 June 2025 from Second Respondent
Determination:	22 August 2025

COSTS DETERMINATION OF THE AUTHORITY

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[1] On 16 May 2025, the Authority issued a preliminary determination in this matter, finding that the applicant Mr Barry Young was employed by Health New Zealand – Te Whatu Ora on and from 1 July 2022. This is as set out in the Pae Ora (Healthy Futures) Act 2022.

[2] In that determination, I recorded that the respondents also sought costs in respect of the preliminary matter. Costs were reserved. The parties were encouraged to resolve

any issue of costs between them, and the Authority made reference to its usual practice of applying the daily tariff to determine costs.

[3] The parties have not been able to resolve costs between themselves, and have filed memoranda accordingly.

[4] On behalf of the first respondent (HNZ) it is submitted that:

a. This matter was heard on the papers, and the appropriate notional starting point would be half of the first day's tariff, being $2,250.00.
b. The first respondent had incurred legal costs in excess of this.
c. The first respondent considers the applicant's position that he was jointly employed by both respondents to be entirely without merit, and the first respondent was put to unnecessary cost given that at all times it maintained it was the employer of the applicant.
d. Accordingly, an award of $2,250 was appropriate and was sought.

[5] On behalf of the second respondent (MoH) it is submitted that:

a. It was the successful party, in that it applied to be removed from the proceedings on the grounds that it was not the applicant's employer at relevant times, and it succeeded.
b. It was required to take multiple significant steps to participate in the Authority's process and achieve this outcome.
c. The starting point should be assessed as being the equivalent of a half day hearing at the usual tariff rate, being $2,250.00.
d. An uplift should be applied on the grounds that the attempt to include MOH as a party was misconceived and ought not to have been pursued at all following the receipt of the statements in reply from both HNZ and MOH.
e. Accordingly, an award of $4,500 was appropriate and was sought, and it had incurred legal costs in excess of this.

[6] Mr Young provided submissions in response. He submitted that:

a. He applied to include MOH as a respondent in good faith, as he did not notice any transition from MOH to HNZ when it occurred.
b. The issue of employer identification was complex.
c. Costs awards should not be punitive.
d. He did not respond to offers to settle costs by MOH because he was under stress due to "concurrent legal matters".
e. It is not accepted that either respondent is entitled to the full daily tariff.

Analysis

[7] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which states:

[8] 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*[1] as confirmed in *Fagotti v Acme and Co Limited*[2]. The principles set out in the above cases are that:

a. Awards are to be modest.
b. Awards are to be only a reasonable contribution to costs actually and reasonably incurred.
c. Awards are not to be used as a punishment or expression of disapproval.

[9] In the present case, the respondents were successful in establishing, in accordance with both their pleadings, that HNZ was the employer of Mr Young at the relevant times. I further note that HNZ never disputed being Mr Young's employer at the relevant time, and the status of HNZ as employer of staff was as set out in statute.

[10] Both HNZ and MOH were required to defend their position due to claims made against them by Mr Young, which claims continued even after both HNZ and MOH had filed pleadings clearly setting out which organisation was the employer of Mr Young and why. They were both fully successful in defending their respective positions. Accordingly, they are both entitled to a costs award.

[1] [2005] 1 ERNZ 808.
[2] [2015] NZEmpC 135 at 114.

[11] 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[3].

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

[13] Having considered matters, including that the preliminary matter was determined "on the papers" following the filing of written submissions, my view is that the correct starting point for an award of costs is half of the first day tariff, being $2,250.00.

[14] I must then consider whether any uplift to this starting point is appropriate. It is submitted that both the amount of work required and that the position advanced had no prospects of success, justify an uplift to the equivalent of the full day's tariff.

[15] I do not accept this submission. The matter was determined "on the papers", thus reducing the amount of time required, and it is common practice for the Authority to award a half day tariff for such matters. In addition, parties are only entitled to a contribution to their costs, and care must be taken to avoid suggesting that costs awards are made as an expression of punishment or disapproval.

[16] All of this suggests that the starting point of $2,250 remains appropriate.

[17] I must also consider whether any reduction in the starting point might be appropriate, as submitted by Mr Young. In support of his stance, he submits that the matter was complex and he did not at the time understand a transition had occurred. I do not accept these submissions. The matter was not a complex one by any standard. Even if Mr Young had not understood matters at the time, the respective positions of the respondents were clearly set out in their pleadings, with HNZ at all times accepting it was his employer and taking responsibility for responding to his claims. This suggests that costs should be awarded at the standard rate.

[18] It is well established that costs follow the event. Both respondents have been successful and are entitled to a contribution to costs, however, there are no grounds for

[3] For further information about the factors considered in assessing costs, see: https://www.era.govt.nz/determinations/awarding-costs-remedies/

either an uplift or a reduction from the Authority's standard tariff. Orders are made accordingly.

Orders

[19] Mr Barry Young is ordered to pay to Te Whatu Ora – Health New Zealand within 28 days of the date of this determination the sum of $2,250.00 (inclusive) as a contribution to its costs. Te Whatu Ora – Health New Zealand is to provide Mr Young with its banking details in a timely way so that the payment of costs may be actioned by him.

[20] Mr Barry Young is ordered to pay to the Chief Executive of the Ministry of Health within 28 days of the date of this determination the sum of $2,250.00 (inclusive) as a contribution to its costs. The Ministry is to provide Mr Young with its banking details in a timely way so that the payment of costs may be actioned by him.

Claire English
Member of the Employment Relations Authority