

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 515
3288000

BETWEEN

CHRISTINE MASSOFF
Applicant

AND

CHIEF EXECUTIVE OF THE
INLAND REVENUE
DEPARTMENT
Respondent

Member of Authority: Claire English

Representatives: Tim Blake, counsel for the Applicant
Susan Hornsby-Geluk and Barnaby Locke, counsel for
the Respondent

Submissions received: 12 August 2025 from Applicant
28 July 2025 from Respondent

Determination: 22 August 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 8 July 2025, the Authority issued a determination dismissing the applicant Ms Massoff's claims of unjustified disadvantage and unjustified dismissal.

[2] In that determination, I recorded that the respondent sought costs and 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. The parties have not been able to resolve costs between themselves, and have filed memoranda accordingly.

[3] On behalf of the respondent (IR) it is submitted that:

- a. It was the successful party and is entitled to a contribution to its costs.

- b. The appropriate starting point for such an award is the tariff for a one-day investigation meeting, being \$4,500.
- c. The legal fees actually incurred by IR were in excess of this.
- d. An uplift should be made, to recognise the degree of time and preparation required, the presentation of irrelevant evidence that required a response from the respondent and the briefing of three additional witnesses, and the amending of the applicant's pleadings at a late stage to add a claim for unjustified dismissal which again required further response.
- e. IR submits that a reasonable costs award would therefore be \$10,000.

[4] On behalf of Ms Massoff it is submitted that:

- a. She has filed a challenge and the question of costs in the Authority should be reserved until the challenge is resolved.
- b. The investigation meeting lasted for one day and there is no good reason to make an award that goes beyond the daily tariff.
- c. Costs should be reduced, as the respondent made a pre-hearing application to exclude certain evidence which the applicant needed to respond to.
- d. It is not unusual for the Authority to decide it is not assisted by the evidence of a particular witness and this does not justify an uplift in costs.
- e. Costs awards should be modest and not punitive.

Analysis

[5] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act). 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.

¹ [2005] 1 ERNZ 808.

² [2015] NZEmpC 135 at 114.

- 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 of the unsuccessful party's conduct.

[6] In the present case, the respondent was successful in defending the applicant's claims. It follows that the respondent is entitled to a contribution to its costs.

[7] 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 days³.

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

[9] The investigation meeting was for one day. I do not consider it material that the day ended at around 4pm, or that submissions were filed at a later date, both of which are not uncommon occurrences. My view therefore is that the correct starting point for an award of costs is the first day tariff, being \$4,500.00.

[10] Although the applicant advises that a challenge has been filed, it is well-established that a challenge does not operate as a stay, including a stay on costs. It is common practice for the Authority to issue a costs determination where one is required, so that all matters before the Authority can be determined in a timely way, and all matters between the parties including costs may be considered by the court.

[11] In the present case, I can see no reason to depart from this practice. It is appropriate for the question of costs in the Authority to be resolved in a timely way by this determination.

[12] Having determined that it is appropriate for costs in the Authority to be resolved, and that the starting point in respect of a one-day investigation meeting is the Authority's usual tariff rate of \$4,500.00, I must consider whether any uplift or reduction might be appropriate.

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

[13] I accept in principle the submission on behalf of the respondent that an uplift may be appropriate to recognise the additional time, effort, and costs incurred as a result of the way the applicant approached the case, and in particular her late filing of a claim of unjustified dismissal. However, I do not accept the submission made on behalf of the respondent that a total costs award of \$10,000 is the appropriate result. This is effectively a plea for an uplift of more than 100% in respect of a one-day hearing. Although I accept that the respondent was required to carry out more work, I am equally mindful of the fact that when all was said and done, the matter was scheduled for, and heard, in a single day.

[14] Accordingly, my view is that no uplift is properly required.

[15] I must also consider whether any reduction in the starting point might be appropriate, as submitted on behalf of the applicant. I do not accept it was inappropriate for the respondent to seek pre-hearing orders about evidence, and that this should result in a reduction in costs awarded.

[16] I accept that costs awards in the Authority should be modest and not punitive. However, this submission does not give rise to any reason for a reduction from the tariff. Accordingly, my view is that no reduction of costs is appropriate in the circumstances.

Orders

[17] Ms Christine Massoff is ordered to pay to the Chief Executive of the Inland Revenue Department within 28 days of the date of this determination the sum of \$4,500.00 (inclusive) as a contribution to its costs.

Claire English

Member of the Employment Relations Authority