

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 556
3268341

BETWEEN JASWINDER SETHI, SUNIL
NAIR AND SONIA SETHI
Applicants

AND VISHAL BAINS
First Respondent

AND SUNNY SEHGAL
Second Respondent

Member of Authority: Sarah Blick

Representatives: Dee Sethi, advocate for the applicants
John Wood, advocate for the respondents

Investigation Meeting: On the papers

Information and submissions received: 15 August 2025 from the applicants
1 August 2025 from the respondents

Determination: 8 September 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 15 July 2025 the Authority issued a determination declining to make orders against the respondents in relation to claimed breaches of a record of settlement between the applicants and Vishal Bains.¹

[2] The parties were given an opportunity resolve any issue of costs between them, which has not been possible. The respondents have applied for costs. Having received costs submissions from the parties, they are now determined on the papers.

¹ *Sethi and Ors v Bains and Anor* [2025] NZERA 414.

Respondents' submissions

[3] The respondents submit as the successful parties they should be entitled to an award of costs. They seek the daily tariff amount for a one-day investigation meeting. Additionally, they seek uplifts relating to further expenses incurred relating to:

- (a) an adjournment of an earlier investigation meeting date due to illness of one the applicants, granted the morning the meeting was to be held.
- (b) the original Authority Member investigating this matter seeking, and not being satisfied with the adequacy of, affidavit evidence supplied by the applicants in support of their claim.

[4] The respondents also rely on two offers made to the applicants on a Calderbank basis dated 12 August 2024 and 29 November 2024. Both letters offered to resolve the matter with a costs amount payable to the respondents of \$2,250 plus GST.

Applicants' submissions

[5] The applicants submit the application for costs should be dismissed on the basis:

- (a) the respondents were not the successful party.
- (b) the Authority made no adverse findings against the applicants.
- (c) costs may only be awarded against a party in exceptional cases - such as where the conduct was frivolous, vexatious, obstructive, or in breach of good faith – and there is no evidence of such conduct by the applicants;
- (d) the applicants always acted reasonably and in good faith.
- (e) a medical certificate was provided in support of the application for the earlier adjournment.
- (f) they complied fully with the Authority's procedural requests and appropriately substantiated their case.
- (g) Calderbank offers made by the respondents were not reasonable, particularly in light of the relative strength of the applicants' case and the nature of the issues in dispute. The mere fact that offers were made and not accepted does not in itself justify a costs "penalty".

[6] The applicants also stated they reserve their position to seek a fair contribution to their actual costs, should the Authority consider any award of costs to be appropriate in the circumstances.

Costs principles

[7] The Authority has the power under clause 15 of Schedule 2 of the Employment Relations Act 2000 to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

- the statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- equity and good conscience is to be considered on a case by case basis.
- costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- costs generally follow the event.
- awards will be modest.
- frequently costs are judged against a notional daily tariff.

Discussion

[8] The respondents successfully defended the claims against them. Costs should follow that event, such that they are entitled to receive a contribution to the costs incurred. Exceptional circumstances do not need to be shown.

[9] Close to a full day investigation meeting was held with further information and submissions received later dates. The correct starting point for an assessment of costs is the tariff rate of \$4,500.

[10] The next step in the assessment is to consider whether there are factors which warrant an increase or decrease in the tariff.

[11] I accept that the respondents' costs were unnecessarily increased by some additional attendances required as a result of the Authority's requests for additional information, and the very late application for an adjournment of the originally scheduled investigation meeting. A modest uplift of \$750 accounts for those matters.

[12] The settlement offers were stated to be “without prejudice save as to costs” and on a Calderbank basis, and would be produced to the Authority if necessary. I am satisfied both were valid and reasonable offers made well in advance of the scheduled investigation meeting dates. The offers would have reduced preparation costs for at least the first scheduled meeting date. The costs amount identified in the Calderbank letters were less than the full daily tariff amount identified as the appropriate starting point here. Acceptance of the offer on either date would have put the applicants in a better position due to the legal costs they now face. The offers should be taken into account. An uplift to the tariff is appropriate to recognise the non-acceptance of the offers. An uplift of \$1,500 is appropriate.

[13] A total amount of \$6,750 as a contribution to costs has been found appropriate. The respondents have provided evidence of the representation costs incurred, which exceed that amount.

[14] I acknowledge the applicants made their claims in order to enforce the terms of a valid and enforceable record of settlement. However, their claims were not established on the balance of probabilities and some of the remedies sought were not available to them. This costs order is not intended to penalise the applicants, but an acknowledgement of genuine costs incurred by the respondents in defending the claims.

[15] For the avoidance of doubt, there is no ability for the applicants to reserve their position on seeking costs in the circumstances. The Authority matter comes to an end with this determination.

Outcome

[16] The applicants Jaswinder Sethi, Sunil Nair and Sonia Sethi must pay Vishal Bains and Sunny Sehgal the amount of \$6,750 in costs within 14 days of the date of this determination. The applicants are jointly and severally liable to pay that amount.

Sarah Blick
Member of the Employment Relations Authority