

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 558
3324140

BETWEEN JASBIR RAINA
Applicant

AND HALL'S REFRIGERATED
TRANSPORT
LIMITED
Respondent

Member of Authority: Andrew Gane

Representatives: Philip Mitchell, counsel for the Applicant
Drisana Sheely, counsel for the Respondent

Investigation Meeting: On the papers

Submissions 13 August 2025 from the Applicant
19 August 2025 from the Respondent

Determination: 10 September 2025

COSTS DETERMINATION OF THE AUTHORITY

Background

[1] On 16 December 2024 I determined Jasbir Raina was unjustifiably dismissed by Hall's Refrigerated Transport Limited (HRTL) and orders for remedies were made in Mr Raina's favour.¹ As part of my determination two issues were left for the parties to resolve amongst themselves. In the event the parties could not resolve the remaining issues, the matters were to be further determined by the Authority.

¹ *Jasbir Raina & Hall's Refrigerated Transport Limited* [2025] NZERA 469.

[2] The first issue of the two issues was for the parties to agree on the calculation of the remedy of lost wages of two months to be paid to Mr Raina.² This matter has now been resolved between the parties and therefore, no further determination is made in respect of remedies.

[3] The second issue was regarding costs. Costs in both determinations were reserved. The parties have been unable to resolve the costs matters and sought a further Authority determination.

Calculation of an order for costs

The Authority's costs principles

[4] The initial investigation into Mr Raina's claims also included his application for interim reinstatement (interim application). The interim application was investigated during a part day investigation meeting and on 17 December 2024 I declined Mr Raina's interim application.³ The Authority's investigation into Mr Raina's substantive claims traversed over a day.

[5] The Authority has the power to award costs.⁴ This power is discretionary but must be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* principles guiding the Authority's approach to costs are outlined including:⁵

- (a) the statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction;
- (b) equity and good conscience are to be considered on a case-by-case basis;
- (c) 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;

² Employment Relations Act 2000, s 123(1)(b)(i).

³ *Jasbir Raina & Hall's Refrigerated Transport Limited* [2024] NZERA 751.

⁴ Employment Relations Act 2000, Schedule 2, cl 15.

⁵ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

(d) costs generally follow the event; and

(e) awards will be modest.

[6] The unsuccessful party will usually have to contribute to the costs of the successful party, as well as meeting their own costs. A daily tariff applied by the Authority sets 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 for the first day of any matter and \$3,500 for any proceeding days.⁶

The Parties' Submissions

[7] Mr Raina sought an order for costs against HRTL. As the successful party in respect of his substantive claim, Mr Raina accepted that a starting point for an order for costs was \$4,500. This was in line with the tariff for a one-day investigation meeting. However, Mr Raina sought an uplift of this amount to reflect:

- (a) the difficult circumstances that led to him proving his case against HRTL's serious and substantial breach of process;
- (b) steps he had taken prior to the investigation meeting to try and resolve his substantive claims with HRTL which were not resolved; and
- (c) his alleged actual legal costs incurred were \$21,479.00 plus GST.

[8] HRTL submits that costs should lie where they fall. While Mr Raina was ultimately successful in respect of his personal grievance, HRTL successfully defended Mr Raina's interim reinstatement application and his substantive claim for permanent reinstatement.

[9] Although HRTL accepted Mr Raina was entitled to an assessment of costs at the ordinary daily rate of \$4,500 for the substantive investigation meeting, it claimed each party's successes would effectively offset the other's entitlement to costs.

⁶ See www.era.govt.nz/determinations/awarding-costs-remedies.

[10] HRTL also acknowledged the attempts by the parties to resolve the matter prior to the investigation meeting. However, it claimed the amounts which were discussed during settlement discussions were more than what Mr Raina was awarded by the Authority. On this basis, it is submitted that this does not justify any uplift in costs.

The Authority's assessment

[11] The usual principle for costs is that a successful party is entitled to a contribution towards their representation costs, and I find there is no reason to depart from that.

[12] Mr Raina was partially successful in his unjustified dismissal claim. The position is that any success for an applicant is sufficient success for the purposes of costs. The matter was heard in one day.

[13] The Authority's daily tariff approach can be applied in this case with a starting point to reflect a day of an investigation meeting with Mr Raina ultimately being the successful party. The starting point in line with the tariff is an order for a contribution to Mr Raina's costs of \$4,500 for the first and only day of hearing his substantive claims.

Adjusting the daily tariff

[14] In this case, a further consideration should be made in respect of HRTL's successful opposition to Mr Raina's interim application. HRTL successfully defended Mr Raina's interim application, and I reserved costs until after the substantive claim had been determined. The investigation meeting for the interim application matter was heard approximately for one-third of a day. This would support a downward adjustment of the starting point costs award.

[15] In terms of Mr Raina's claims for an uplift due to the settlement discussions between them, the evidence showed there was a Calderbank offer by Mr Raina to HRTL to resolve the matter. However, the offer was considerably more than what the Authority's ordered in Mr Raina's favour as part of his substantive claims.

[16] For this reason, the Calderbank offer, or any other evidence of settlement discussions should be treated as neutral considerations and does not provide any justification for uplifting the starting point for a costs award to Mr Raina.

[17] Stepping back to look at matters overall it is reasonable in the “mixed success” circumstances of this case that there is a modest reduction of the costs awarded. I consider a reduction of one-third of the starting point to an amount of \$3,000, which reflects HRTL’s defence of the interim reinstatement claim and represents a fair and appropriate costs award.

[18] Mr Raina is also entitled to reimbursement of \$71.55 relating to the filing fee.

Order

[19] HRTL is to pay Mr Raina with 28 days of this determination:

- (a) \$3,000 as a contribution to his costs in this matter; and
- (b) \$71.55 as reimbursement of the filing fee.

Andrew Gane
Member of the Employment Relations Authority