

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 576  
3201559

BETWEEN                      MELISSA BOWEN  
   Applicant

AND                              NATIONAL AUSTRALIA BANK  
   LIMITED  
   First Respondent

   ANTHONY HEALY  
   Second Respondent

   ANNIE BROWN  
   Third Respondent

   REBECCA LEE  
   Fourth Respondent

Member of Authority:            Peter van Keulen

Representatives:                Michael O'Brien, counsel for the Applicant  
   Rebecca Rendle and Jessica Greenheld, counsel for the First  
   and Second Respondents  
   Penny Swarbrick, counsel for the Third and Fourth  
   Respondents

Investigation Meeting:            On the papers

Submissions Received:            21 July 2025 from the First and Second Respondent  
   21 July 2025 from the Third and Fourth Respondents  
   11 August 2025 from the Applicant

Date of Determination:            17 September 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1]     In a determination dated 23 June 2025<sup>1</sup> (the Determination) I struck out and, in the

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<sup>1</sup> *Bowen v National Australia Bank Limited and Ors* [2025] NZERA 362.

alternative, dismissed Melissa Bowen's employment relationship problem against the respondents because I did not have jurisdiction to investigate the problem and because the problem was frivolous.

[2] In the Determination I reserved costs so that the parties could try to agree costs. The parties have not agreed costs and now the respondents seek costs.

### **Application for costs**

[3] The respondents seek an award of costs based on the daily tariff for a half day investigation meeting with an uplift.<sup>2</sup> The respondents say:

(a) Ms Bowen's pursuit of an employment relationship problem that was without any merit and frivolous justifies an increase to the daily tariff (citing various authority determinations where this has occurred).<sup>3</sup> Further, Ms Bowen's untenable claim caused them unreasonable and unnecessary costs, and this should sound in an uplift to the daily tariff rate.

(b) Ms Bowen's conduct of this matter caused them to incur costs that were additional to the normal costs associated with an employment relationship problem where there is a preliminary issue over jurisdiction and/or an application to dismiss is made.<sup>4</sup> And this additional cost should be accounted for in an uplift to the daily tariff rate.

[4] Ms Bowen accepts that costs should be awarded to the respondents and says the award should be calculated by applying the daily tariff without any uplift to the rate.

[5] As Ms Bowen has challenged the Determination, she also seeks an order that any costs awarded not be payable by her until 28 days after the outcome of the challenge is known.

### **Analysis**

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<sup>2</sup> The normal practice of the Authority when setting costs is to apply a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff. The current daily tariff is \$4,500 for the first day of an investigation meeting and \$3,500 for every subsequent day of an investigation meeting.

<sup>3</sup> *Eastern Bay Independent Industrial Workers' Union 1995 Inc & Ors v TSNZ Pulp & Paper Maintenance Ltd* [2016] NZERA Auckland 361, *Brenan v Afos Ltd* [2018] NZERA Auckland 31, *XJ v UH Ltd* [2021] NZERA 237, and *Ututaonga v North Western Farms Ltd* [2022] NZERA 69.

<sup>4</sup> Pursuant to clause 12A of Schedule 2 of the Employment Relations Act 2000.

### *Costs in the Authority*

[6] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.<sup>5</sup>

### *Costs follow the event*

[7] The presumption with costs is that costs should follow the event so that a successful party is awarded costs from the other party. In this case the respondents were successful, and they are entitled to an award of costs.

### *Applying the daily tariff*

[8] There is no reason to depart from the normal daily tariff approach to assessing costs in the Authority. I will calculate the award of costs based on the daily tariff.

[9] The investigation meeting for this matter took a half day and the starting point for any costs award is, therefore, \$2,250.

### *Increasing the daily tariff*

[10] The daily tariff represents a contribution for all costs associated with dealing with the investigation and resolution of an employment relationship problem.

[11] If the daily tariff is to be increased to reflect increased costs for a successful party, what is required is additional work that is significant and is not covered as part of the normal costs associated with the resolution of an employment relationship problem through the Authority's investigatory process. It is often the case that additional work that justifies an increase in the daily tariff is work that was unnecessary and/or was caused by unreasonable conduct of the case by the other side or arises because of the complexity of the problem.

[12] In this employment relationship problem, the daily tariff for a half day investigation meeting covers a contribution for all the costs associated with the application to strike out/dismiss. In this regard I would expect a party's costs to arise in respect of counsel's work

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<sup>5</sup> For further information about the factors considered in assessing costs, see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).

in giving advice on the employment relationship problem, preparing the statement in reply, preparing the application to dismiss, considering the applicant's response to the application, preparing submissions, considering the applicant's submissions, and attending the half day investigation meeting.

[13] If the daily tariff is to be increased, then I would need to be satisfied that more work was required by counsel than what is covered above. In this case I am not persuaded that because the applicant's problem was frivolous and because I did not have jurisdiction over it, there was an increase in the costs for the application undertaken. To otherwise increase costs would be to award more simply because the respondents were successful or to punish the applicant for bringing a frivolous claim.

[14] I am however persuaded that there was some additional work required because of the way the applicant conducted her claim. There was additional work required due to amended statements of problem and the application for recusal – noting here that the costs for the application for recusal are separate but there was some cross over into this application.

[15] Overall, it is appropriate to increase the daily tariff but only by a modest amount, which I quantify as \$250.

*Respondents to be treated as two groups for costs purposes*

[16] As the first and second respondents were jointly represented by counsel and the third and fourth respondents were jointly represented by counsel it is appropriate that any costs award be made to each group of two respondents (rather than only one award for all four or four separate awards for each).

*Conclusion*

[17] The respondents as the successful parties are entitled to receive an award of costs. The daily tariff should be applied to calculate the quantum of the award with a small increase, of \$250, to reflect additional work undertaken by the respondents.

**Order**

[18] Ms Bowen is to pay the first and second respondents \$2,500 and the third and fourth respondents \$2,500 as a contribution to their costs in this matter.

[19] I make no additional order about a timeframe for total payment, as requested by Ms Bowen. I leave it to the parties in the first instance to negotiate and agree when this cost award should be paid. If that fails then they can come back to the Authority for assistance with this, by way of a variation to my order.

Peter van Keulen  
Member of the Employment Relations Authority