

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 593  
3241159

BETWEEN	MARY HULLEN, ROMANA WILDY, BURKHARD STEIN, JOHN WALKER, ANNABEL MOODIE, GEORGINA BELL - BURGESS Applicants
AND	AIR NEW ZEALAND LIMITED Respondent

Member of Authority:	Alex Leulu
Representatives:	Liz Lambert and Erika Whittome, advocates for the Applicants Andrew Caisley and Dana Thomson, counsel for the Respondent
Submissions received:	12 September 2025 from the Applicant 29 August 2025 from the Respondent
Determination:	24 September 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] On 15 August 2025 the Authority dismissed the applicants' claims against Air New Zealand Limited (Air New Zealand) for unjustified dismissal and exemplary damages.<sup>1</sup>

[2] As part of its determination, the Authority reserved its decision on costs. A timetable was also set for memoranda to be filed if the parties were unable to resolve the issue of costs themselves.

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<sup>1</sup> *Hullen and others v Air New Zealand Limited* [2025] NZERA 497.

[3] The parties were unable to resolve the issue of costs and on 29 August 2025, Air New Zealand filed and served a memorandum asking the Authority to make a further determination for an award of costs against the applicants. In response, the applicants filed and served their costs memorandum on 12 September 2025.

### **Costs principles**

[4] Clause 15 of Schedule 2 of the Employment Relations Act 2000 gives the Authority discretion to order any party to a matter to pay to another party such costs and expenses as the Authority thinks reasonable.

[5] 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.<sup>2</sup> The current tariff for costs is \$4,500 for the first day of any matter and \$3,500 for any proceeding days.

[6] Relevant principles governing costs in the Authority include consideration of whether the conduct of the parties increased costs unnecessarily, warranting an adjustment up or down, without compromising the Authority's otherwise modest approach to costs.<sup>3</sup>

[7] Costs should not be used to punish a party or express disapproval of an unsuccessful party's conduct.

### **Should costs be awarded?**

[8] The investigation into the applicants claims traversed over several days with an initial investigation convened from 17 to 18 September 2024 and then a further investigation meeting on 7 March 2025.

[9] Air New Zealand sought costs of \$11,500 based on the notional daily tariff rate for a three-day Authority investigation. Although it claimed its actual costs were more than what it claimed, Air New Zealand argued its costs claim was necessary and reasonable in all the circumstances.

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<sup>2</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

<sup>3</sup> See [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies).

[10] In accordance with the principles of equity and good conscience the applicants have sought for costs to lie where they fall. The applicants made several submissions relating to matters which fell outside of the consideration of costs. This included the detriment faced by the applicants relating to the loss of travel benefits because of their dismissal.

[11] The applicants asked the Authority to also consider the applicants' financial circumstances given they have suffered considerable and permanent financial loss associated with their dismissal which arose from circumstances it described as being entirely unconnected with their conduct.

### **Outcome**

[12] Air New Zealand was the successful party and costs should follow the event and was entitled to a contribution to its legal costs. Although I acknowledge the applicants' financial circumstances, no evidence was provided to support their submissions. Accordingly, there are no compelling reasons to award costs outside the notional daily tariff.

[13] In applying the tariff for a three-day investigation meeting, the appropriate award of costs is \$11,500. Considering all the available information, there were no compelling reasons for an adjustment to this amount. I order the applicants to pay Air New Zealand \$11,500.00 as a contribution to the costs it has incurred.

Alex Leulu  
Member of the Employment Relations Authority