

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 597
3324800

BETWEEN	TUNCER SAKGUN Applicant
AND	WHOLESALE SUSTAINABLE WINDOWS LIMITED First Respondent
AND	REAL CONSTRUCTION LIMITED Second Respondent
AND	QUINN WRIGHT Third Respondent
AND	KIRSTY WRIGHT Fourth Respondent

Member of Authority:	Davinnia Tan
Representatives:	Applicant in person Andy Bell, counsel for the Respondents
Investigation Meeting:	On the papers
Submissions received:	22 September 2025 from Applicant 22 September 2025 from Respondent
Determination:	25 September 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 15 September 2025, the Authority issued a determination¹ in this matter, dismissing the applicant's claim that he was an employee of the Respondents.

¹ *Tuncer Sakgun v Wholesale Sustainable Windows Limited & Ors* [2025] NZERA 518.

[2] In that determination, 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.

[3] The parties have not been able to resolve costs between themselves, and have filed memoranda accordingly.

Submission

[4] The First Respondent is seeking costs at the usual daily tariff rate and submits that it is appropriate for the Authority to award costs on this basis. The length of the investigation meeting was for one full day and one half day, meaning the appropriate total tariff would be \$6,250.

[5] The First Respondent has submitted that although it considers there are reasonable grounds to warrant an uplift on the usual daily tariff rate, it will not be seeking one in these circumstances.

[6] The First Respondent acknowledged that Mr Sakgun is currently unemployed and receiving Jobseeker Support. Mr Sakgun has advised the First Respondent that he will have difficulty in meeting a costs award.

[7] The First Respondent submitted that Mr Sakgun's ability to pay should not reduce the costs award ordered by the Authority, noting that if Mr Sakgun does not currently have the means to pay, this does not mean that his circumstances will not change. The Respondents consider that they defended themselves legitimately and is entitled to receive the benefit of successfully defending Mr Sakgun's claims by way of a costs award in its favour. It submitted that the inability to pay must be weighed against other relevant factors.

[8] The First Respondent also relies on *Smith v Director General of Ministry for Primary Industries*² where the Employment Court stated:

Substantially reducing, or eliminating, a costs liability at the stage at which costs are assessed, on the basis of the unsuccessful party's financial position at that particular

² *Smith v Director General of Ministry for Primary Industries* [2018] NZEmpC 20 at [22]–[23].

point in time, denies the successful party the ability to make decisions as to whether, and when, to seek to enforce an award it would otherwise be entitled to.

[9] Mr Sakgun submitted that he has filed a Statement of Claim in the Employment Court, challenging the Authority's determination and therefore it would be premature and inappropriate for the Authority to make a final costs order. Mr Sakgun also submitted that he is unemployed and reliant on Jobseeker Support. Consequently, Mr Sakgun has asked the Authority to decline to make a costs order against him, or in the alternative, reserve costs pending the outcome of the Employment Court proceedings.

Principles

[10] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[11] 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*³ as confirmed in *Fagotti v Acme and Co Limited*⁴. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment, and as the Court of Appeal has stated several times, a "steely approach" is to be adopted when considering Calderbank offers.⁵

[12] 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 days.⁶

³ [2005] 1 ERNZ 808.

⁴ [2015] NZEmpC 135 at 114.

⁵ *Health Waikato v Elmsly* [2004] 1 ERNZ 172 (CA) at [53] and *Blue Star Print v David Mitchell* [2010] NZCA 385 at [20].

⁶ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

[13] The daily tariff is usually taken as a starting point, although is not to be used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.⁷

Analysis

[14] Having reviewed the matter and parties' submissions, I consider it appropriate to make a costs award of \$6,250 in favour of the First Respondent pursuant to s 15 of schedule 2 of the Act.

[15] In this case, Mr Sakgun was unsuccessful in relation to his claim that he was an employee of the First Respondent. His claims against the Second Respondent, Third and Fourth Respondent, were also without merit, and therefore were unsuccessful. The Respondents are therefore entitled to an award of costs. In these circumstances, the First Respondent has sought an award that equates to the daily tariff.

[16] The investigation meeting ran for a full day and a half; therefore I proceed on the basis that the appropriate starting point is the daily tariff as set out above.

[17] Although Mr Sakgun is not currently employed and has challenged the Authority's determination, these matters are not a bar to a costs award against him.

[18] As the Employment Court has noted, any reduction or elimination of costs liability based on one's inability to pay denies the successful party its entitlement.

[19] I am not persuaded there are any good reasons for denying the First Respondent from its rightful entitlement to costs as the successful party.

Orders

[20] For the reasons above, I order Tuncer Sakgun to pay Wholesale Sustainable Windows Limited within 28 days of this determination, a total of \$6,250 as a contribution towards its costs.

Davinnia Tan
Member of the Employment Relations Authority

⁷ Practice Direction of the Employment Relations Authority
<https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>