

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 602
3310180

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| BETWEEN | DAVID HANNAH Applicant |
| AND | THE SALVATION ARMY NEW ZEALAND TRUST Respondent |

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| Member of Authority: | Claire English |
| Representatives: | Robert Morgan, advocate counsel for the Applicant Alan Davis, counsel for the Respondent |
| Submissions received: | 27 August 2025 from Applicant 28 August 2025 from Respondent |
| Determination: | 29 September 2025 |

COSTS DETERMINATION OF THE AUTHORITY

[1] On 21 August 2025, the Authority issued a determination in this matter, dismissing the applicant’s claim of unjustifiable dismissal. 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.

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

[3] The applicant requests that he be awarded costs in the sum of \$2,500. This is on the basis that the investigation meeting lasted for half a day, the applicant offered an apology to the team leader he had pushed and insulted during the incident that led to his dismissal, and any award against him “could be used as further punishment”.

[4] The respondent has also filed an application for costs. It states that it was the successful party, the daily tariff for the first day of hearing should apply at the usual rate of \$4,500, and it has incurred costs of more than this as well as disbursements and airfares.

Analysis

[5] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act). 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*¹ as confirmed in *Fagotti v Acme and Co Limited*². The principle set out in the above cases is that costs are to be modest and should not be used as a punishment or expression of disapproval of the unsuccessful party's conduct.

[6] 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 days³. The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[7] Costs follow the event. In this matter, the respondent was the successful party. Therefore, the respondent, and not the applicant, is entitled to an award of costs.

[8] The investigation meeting in this matter was held over two half days, to accommodate the illness of a witness.

[9] It is submitted for the applicant that it would be appropriate to consider that the investigation meeting ran for a half day only, on the basis that the second day was shorter than a full half day. While this may be so, the investigation meeting was scheduled for one day, and in the end took place over two half-day periods. Parties and the Authority were required to set aside time for two half-day periods. It is appropriate to recognise this as a single hearing day for the purposes of applying the Authority's tariff.

¹ [2005] 1 ERNZ 808.

² [2015] NZEmpC 135 at 114.

³ For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

[10] The starting point is therefore an award of costs in favour of the respondent at the rate of the tariff for a one-day hearing, being the sum of \$4,500.

[11] Neither party has argued for an uplift from this.

[12] It is suggested on behalf of the applicant that a reduction should be applied as he offered an apology to his former colleague during his evidence, and because costs should not be used as a form of punishment.

[13] The purpose of the Authority's investigation meeting was not to elicit an apology from the applicant, and accordingly I do not consider it relevant that the applicant chose to offer one during the course of giving his evidence.

[14] While it is correct to say that costs should not be used as an expression of punishment or disapproval, this cannot be said to apply to an award of costs at the Authority's standard tariff rates. As I have already noted, no uplift is proposed, and there is no suggestion that the applicant's conduct is relevant to an award of costs following an investigation meeting. Accordingly, I do not consider this a relevant factor requiring any reduction.

[15] In short, there are no particular factors which properly require a departure from the daily tariff.

Orders

[16] Mr David Hannah is ordered to pay to The Salvation Army New Zealand Trust within 28 days of the date of this determination the sum of \$4,500.00 (inclusive) as a contribution to costs.

Claire English
Member of the Employment Relations Authority