

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 637
3346020

BETWEEN

CINTINA MIKI
Applicant

AND

NGĀTI MĀKINO IWI AUTHORITY
Respondent

Member of Authority: Sarah Blick

Representatives: Renika Siciliano and Cree Ratapu, counsel for the applicant
Alex Hope, counsel for the respondent

Investigation Meeting: On the papers

Submissions and information received: 3 September 2025 from the applicant
19 September 2025 from the respondent

Determination: 10 October 2025

DETERMINATION OF THE AUTHORITY

[1] On 5 August 2025 the Authority issued a determination finding Ngāti Mākino Iwi Authority (NMIA) had breached the terms of a record of settlement with Cintina Miki.¹ A penalty of \$7,000 was imposed on NMIA, with \$6,000 of that payable to Ms Miki. In the absence of a detailed breakdown of costs from Ms Miki, the issue of costs was reserved. The parties were given an opportunity resolve the issue of costs between them, which has not been possible. Ms Miki has applied for costs. Having received costs submissions from the parties, they are now determined on the papers.

¹ *Miki v Ngāti Mākino Iwi Authority* [2025] NZERA 475.

Ms Miki's submissions

[2] Ms Miki acknowledges that not all of her claims were established, but as the successful party says she is entitled to an award of costs.

[3] Ms Miki points out that in reserving costs, the Authority did not accept NMIA's submission that a reasonable contribution to costs should be no more than \$1,250, and found that a higher proportion of the daily tariff was justified.

[4] While acknowledging the Authority's daily tariff approach to costs, Ms Miki submits that the actual time involved in preparing evidence and submissions, as well as the pre-investigation procedural steps exceeded this basis and that costs generally follow the event.

[5] On 29 January 2025, Ms Miki offered to accept \$7,000 to resolve this matter. It is said at that time, Ms Miki's legal costs were \$4,860.45 (plus GST). The Calderbank offer stated the payment could constitute a payment in lieu of a penalty, the interest on unpaid wages and legal costs. While a short timeframe was provided for consideration, Ms Miki says NMIA rejected the offer outright on 30 January 2025 and did not seek any extension of time for further consideration or make a counter offer at that stage.

[6] It was submitted the \$7,000 was a valid Calderbank offer which directly aligned with the penalties ultimately awarded by the Authority. She says NMIA's failure to act reasonably in considering her original Calderbank offer has led to unnecessary legal costs being incurred, which she should not be required to bear.

[7] Ms Miki acknowledges NMIA made lesser offers, as well as an \$8,000 compensation offer on 14 April 2025. She says, however, since her initial offer of \$7,000 in January 2025, her legal costs increased significantly due to the progression of the Authority's proceedings, which included the preparation of evidence and legal submissions on 25 March 2025. Ms Miki says she did not accept the subsequent offers from NMIA, given the position previously communicated to NMIA and the ongoing impact on her mana and reputation.

[8] Since that time, she raised further issues relating to the relevance of some of NMIA's affidavit evidence, which she believes prolonged these matters unnecessarily and which required additional attendances by counsel in response.

[9] Ms Miki refers to having had to repeatedly had to remind the NMIA Board, through counsel, of their obligations while meeting her own obligations and seeking new employment. As both an uri and iwi member, she was placed in the position of having to pursue her former employer for entitlements owed to her under ROS. She says as acknowledged in *MW v Spiga Ltd*, the reaching of a settlement agreement reflects a state of ea (balance or fulfilment) in response to a hara or wrong. She says the breach of the ROS disrupted that state of ea and ought to be restored.² To do, it was submitted, requires more than a finding that there has been a breach – in her submission, in circumstances where one party has been disadvantaged in the pursuit of that breach, tikanga requires that to be put right in terms of costs. That is, something more must now be done to return the parties to a state of ea. Ms Miki has been left out of pocket in pursuing this breach and protecting her mana, and it is submitted an increase in costs from the daily tariff is required to address this.

[10] A breakdown was attached to costs submissions state a total of \$13,507.46 plus GST in costs have been incurred. Ms Miki seeks an award of costs in the amount.

NMIA's submissions

[11] NMIA says had this matter not been dealt with on the papers it would have warranted a half day investigation meeting, which would have attracted a costs award of \$2,250. NMIA has accepted the view expressed by the Authority in its determination that a higher proportion of the daily tariff is warranted than NMIA's previous submission of \$1,250. It submits a costs award at the full daily tariff of \$4,500 is appropriate.

[12] NMIA refers to without prejudice save as to costs offers the parties made. It notes that the offer made by Ms Miki on 29 January 2025 was well after the statement of problem was lodged by Ms Miki (on 14 December 2024). Ultimately the Authority ordered NMIA to pay \$7,000 as a penalty with \$1,000 of this to be payable to the Crown. That left Ms Miki with \$6,000 which is less than the settlement offer.

² *MW v Spiga Ltd* [2024] NZEmpC 147.

[13] NMIA says it offered, on an open basis, before two final breaches of the ROS were notified on 25 March 2025, to pay \$2,000 to Ms Miki in lieu of penalties. This was based on penalties amounting to \$4,000 with 50% being paid to Ms Miki. NMIA also offered to pay interest on an amount deducted from Ms Miki's final wages and reimburse the Authority application fee. At that stage NMIA offered \$1,000 costs (plus GST).

[14] Additionally, NMIA says there was no need to lodge an application at the time Ms Miki did, as NMIA had attempted to negotiate a settlement with Ms Miki regarding the deduction from her wages. Ms Miki "ignored" NMIA's offer and then lodged an application. Had Ms Miki had the "courtesy" of replying to the offer this matter could have been resolved. NMIA says if NMIA's offer was rejected, it could well have agreed then and there to repay the money deducted, which is what it did a short while later. On that basis the application to the Authority was premature.

[15] NMIA notes the Authority found NMIA took steps to rectify the breaches. Most significantly, the Authority determined that paragraph the breaches were either inadvertent or negligent, or both.

[16] NMIA further submits Ms Miki's use of a partner from a large law firm is not something that should be compensated by NMIA when the work undertaken was relatively simple. In this case it says Ms Miki sought Rolls-Royce representation for low to moderate breaches of an ROS, and the hourly rate charged per hour was not reasonable. NMIA also takes issue with the number of hours spent drafting the statement of problem and compiling supporting documents as not being not reasonable in the circumstances.

Costs principles

[17] The Authority has the power under clause 15 of Schedule 2 of the Employment Relations Act 2000 to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience is to be considered on a case by case basis.

- 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.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.

Discussion

[18] Costs follow the event. Ms Miki was the successful party, and is entitled to receive a contribution to costs incurred. While she initially sought a compliance order, this was no longer required as NMIA had complied with terms of settlement to the extent it could by the time it came time for the Authority to make a determination.

[19] I agree that had an investigation meeting been held in this matter, no more than half a day would have been required. However, given the level of attendances and preparation required, the correct starting point for an assessment of costs is at the tariff rate of \$4,500, as NMIA now accepts.

[20] The next step in the assessment is to consider whether there are factors which warrant an increase or decrease in the tariff.

[21] I do not accept that Ms Miki's application to the Authority was necessarily premature. The Authority received Ms Miki's statement of problem on 12 December 2024. While a relevant compensation amount had been paid by that point, the issue of the deducted amount from Ms Miki's final pay had not been resolved, with Ms Miki having raised it through counsel as early as 15 November 2024. Nor had Ms Miki received a written reference from NMIA in the time required under the ROS.

[22] By 20 December 2024 NMIA paid the deducted amount to Ms Miki, but had still failed to provide a written reference. On that date counsel advised an amended statement of problem (ASOP) would be prepared and lodged by mid January 2025. In mid January 2025 counsel further advised the parties were working together and sought an extension to lodge an ASOP, which was granted by a duty member unopposed by NMIA.

[23] By 20 January 2025 NMIA lodged a statement in reply which acknowledged a number of the breaches, stated a draft reference had been provided to Ms Miki for her consideration that day, admitted liability to pay interest on the deducted amount, and submitted an appropriate penalty amount would be no more than \$2,000. NMIA admitted liability to pay costs but submitted the application was premature and it was not appropriate to award costs as special damages (as sought by Ms Miki in her statement of problem).

[24] Ms Miki's settlement offer on 29 January 2025 was only open for a short time. It was time-bound to 30 January 2025 because Ms Miki was due to lodge an ASOP by 31 January 2025. The timeframe was reasonable in light of this and the fact it came after ongoing discussions about resolution with NMIA. I am satisfied this was a reasonable Calderbank offer made well enough in advance of the Authority's investigation on the papers, before the parties would have needed to incur costs of attending a case management conference and lodge affidavit evidence. Preparation costs would have been avoided had NMIA accepted it. Acceptance of the \$7,000 offer (equivalent to the ultimate penalty outcome) would have put NMIA in a better position than it is now, due to the legal costs it now faces. The offer should be taken into account. An uplift to the tariff is appropriate to recognise the non-acceptance of offer. An uplift of \$1,500 is appropriate.

[25] NMIA has not sought to rely on the offer by it apparently made on 14 April 2025. Had it been before the Authority for me to consider, I likely would have agreed with the submission that matters had moved on by then with additional preparation costs incurred such that Ms Miki's decline of it was reasonable in the circumstances.

[26] In her submissions seeking costs following determination, Ms Miki has sought full indemnity costs in relation to the Authority application, despite the Authority stating in its substantive determination that NMIA's conduct in the proceedings did not warrant that outcome and such costs were declined. The Authority's position on indemnity costs has not changed. The hara (or breaches) were considered in the Authority's assessment and award of a penalty, and I do not consider the breaches require further consideration for costs purposes.

[27] I agree that this matter ought to have been relatively straightforward and could have been carried out much more economically given the nature of the application. However, that is the case for both parties. This is ultimately a neutral factor.

[28] No further adjustments are made.

Outcome

[29] Ngāti Mākino Iwi Authority is to pay Cintika Miki \$6,000 in costs and reimburse the \$71.55 Authority application fee within 14 days of the date of this determination.

Sarah Blick
Member of the Employment Relations Authority