

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 663  
3297999

BETWEEN THOMAS PATTON GREEN  
Applicant  
AND FISHER & PAYKEL APPLIANCES  
LIMITED  
Respondent

Member of Authority: Peter van Keulen  
Representatives: Applicant in person  
Rebecca Rendle and Gioja Buckleton, counsel for the  
Respondent  
Investigation Meeting: On the papers  
Submissions Received: 15 September 2025 from the Respondent  
29 September 2025 from the Applicant  
Date of Determination: 21 October 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The substantive determination**

[1] In a determination dated 18 August 2025,<sup>1</sup> I resolved the employment relationship problem between Thomas Green and Fisher & Paykel Appliances Limited in favour of Fisher & Paykel.

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<sup>1</sup> *Green v Fisher & Paykel Appliances Limited* [2025] NZERA 500.

[2] In my determination I reserved costs so that the parties could try to agree costs. The parties have not agreed costs and now Fisher & Paykel seeks costs.

### **Application for costs**

[3] Fisher & Paykel seeks an award of costs based on the daily tariff for a two-day investigation meeting plus time spent on written submissions after the investigation meeting.<sup>2</sup> Fisher & Paykel says they were successful in defending Mr Green's claims, and Mr Green's conduct of his claims was unreasonable and unnecessarily increased its costs therefore the costs award should be a minimum of \$9,750.

[4] Mr Green opposes the application for costs. Mr Green says:

(a) There is no reason to depart from applying the daily tariff and no reason to increase it, so the starting point is the daily tariff applied for a one-and-a-half-day investigation meeting, this being \$6,250.

(b) From that starting point a reduction should be applied because he was self-represented, there is a public interest in access to justice for injured employees particularly when pursuing, amongst other things, medical expenses (as he was) and he has limited ability to pay any cost award.

### **Analysis**

#### *Costs in the Authority*

[5] 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

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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.

respect of this power are outlined in the Authority's practice note on costs.<sup>3</sup>

*Costs follow the event*

[6] The presumption with costs is that costs should follow the event; that is the successful party should be awarded costs from the other party. In this case Fisher & Paykel was successful, and it is entitled to an award of costs.

*Applying the daily tariff*

[7] With this employment relationship problem, there is no reason to depart from the normal daily tariff approach to assessing costs in the Authority.

[8] The investigation meeting for this matter took one complete day and a further incomplete day. This second day of the investigation meeting ended early afternoon and did not include any submissions from the parties. Given that submissions were made in writing after the investigation meeting, I am satisfied that it is appropriate to apply the daily tariff to two days of investigation meeting.

[9] The starting point for a costs award for Fisher & Paykel is \$8,000.

*Increasing the daily tariff*

[10] I have considered the submission put forward by counsel for Fisher & Paykel regarding an increase to the daily tariff. I am not satisfied that the grounds advanced warrant an increase. There may have been some additional work, but this was covered by additional time spent in the investigation meeting. So, Fisher & Paykel will get additional costs through the application of the daily tariff to the additional time spent in the meeting.

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<sup>3</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).

*Reducing the daily tariff because Mr Green was self-represented*

[11] That Mr Green represented himself in the Authority is not a reason to reduce the daily tariff as applied for Fisher & Paykel's costs.

*Reducing the daily tariff for public interest reasons*

[12] This employment relationship problem is not of the type that justifies a reduction in the daily tariff for public interest reasons.

*Reducing the daily tariff for financial hardship*

[13] In *Tomo v Checkmate Precision Cutting Tools Ltd*<sup>4</sup> Judge Inglis addressed the issue of reducing a costs award to account for the financial position of the unsuccessful party.

[14] Applying *Tomo* to the exercise of my discretion on costs, I am required to consider whether the financial position and subsequent hardship of the unsuccessful party is such that a reduction might be appropriate. Then I must balance that against the successful party's interests and rights, and the broader public policy considerations.

[15] In this case I am satisfied that the financial position of Mr Green is such that the imposition of costs at the daily tariff rate would cause hardship to him. That hardship weighs against the broader public policy consideration of maintaining consistency and certainty of costs in the Authority and upholding Fisher & Paykel's right to receive an award of costs as the successful party

[16] I will therefore reduce the daily tariff amount by \$3,000.

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<sup>4</sup> *Tomo v Checkmate Precision Cutting Tools Ltd* [2015] NZEmpC 2.

### *Conclusion*

[17] Fisher & Paykel as the successful party is entitled to receive an award of costs. The daily tariff should be applied to calculate the quantum of the award with a reduction of \$3,000. This means Fisher & Paykel is entitled to an award of costs of \$5,000.

### **Order**

[18] Mr Green is to pay Fisher & Paykel \$5,000 as a contribution to its costs in this matter.

[19] I make no additional orders about a timeframe for total payment or instalments over time at this stage. I leave it to the parties in the first instance to negotiate a payment plan and if that fails then they can come back to the Authority for assistance with setting payments, by way of a variation to my order.

Peter van Keulen  
Member of the Employment Relations Authority