

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 674
3353623

BETWEEN	NICHOLAS KADEN Applicant
AND	PRATT & WHITNEY AIR NEW ZEALAND SERVICES Respondent

Member of Authority:	Matthew Piper
Representatives:	John Horan, advocate for the Applicant Andrew Shaw, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions and other information received:	27 August 2025 from the Applicant 14 August 2025 from the Respondent
Determination:	23 October 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 18 June 2025 the Authority issued a determination declining Nicholas Kaden's application for his personal grievance and related claims to be removed to the Court¹. Costs were reserved.

[2] When the parties were unable to resolve costs between themselves, Pratt & Whitney Air New Zealand Services (PWANZS) sought costs of \$2,250.00. The applicant denied a costs award should be made in favour of the respondent.

¹ *Kaden v Pratt & Whitney Air New Zealand Services* [2025] NZERA 433

Relevant law

[3] Clause 15 of Schedule 2 of the Employment Relations Act 2000 allows the Authority to award any costs and expenses it considers reasonable. This discretion must be exercised by the Authority on a principled basis, taking into account the circumstances of the particular case.

[4] When assessing costs in this matter, the Authority had regard to the well established costs assessment principles identified by the Employment Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz*². These factors include that an unsuccessful party will normally be required to contribute towards the successful party's actual legal costs, that costs are discretionary and that costs awards should be modest.

[5] The Authority usually adopts a notional tariff based approach to costs. Given the removal matter was investigated 'on the papers' the appropriate tariff, as was indicated to the parties in the determination, is \$2,250.00.

Should costs be awarded?

The parties' positions

[6] The \$2,250.00 costs award PWANZS sought is consistent with the approach indicated by the Authority in its determination as being appropriate given the matter was heard 'on the papers'.

[7] Mr Kaden submitted that no costs should be awarded against him because:

- a. He disagreed with the Authority's decision to decline his removal application and anticipated applying to the Court directly for leave for removal;
- b. PWANZS was said by Mr Kaden to be a large US corporation with access to significant funds and legal resources, and Mr Kaden claimed it was using costs to place pressure on him as he pursued other claims against it;

² [2005] ERNZ 808

- c. He suffered from health issues he said were connected to his employment, and had accessed his retirement savings for living expenses because he said he was under financial pressure; and
- d. Any investigation conducted by the Authority would ultimately need to be heard by the Court because of the seriousness of the issues involved.

[8] In addition, Mr Kaden said that if costs were to be awarded against him, he should only be ordered to pay at a rate of \$10.00 per week.

Analysis

[9] Mr Kaden disagreeing with the Authority's determination of 18 July 2025 and saying that he may seek to have the matter heard in the Court does not justify a departure from the general principle that costs follow the event.

[10] PWANZS was put to expense responding to Mr Kaden's unsuccessful removal application and are entitled to a contribution to their costs of representation. This is not changed by PWANZS being a large and legally represented employer, or Mr Kaden's view that PWANZS is using the issue of costs to unfairly place pressure on him.

[11] Mr Kaden's ability to pay and his health issues are relevant to the exercise of the Authority's discretion regarding costs. However, these were factors known to Mr Kaden when he lodged his application. This means exposure to a costs award was a risk he chose to take when he lodged an application which, as explained in the determination, was not well-founded.

[12] Mr Kaden did not provide any evidence sufficient to support a downward adjustment due to the financial and health matters he described, or for allowing payment by instalment.

[13] Enforcement of any costs award is a matter for the parties, and the Authority therefore declines to order that any costs award is to be paid by instalment.

Orders

[14] Within 28 days of the date of this determination Mr Kaden is ordered to pay Pratt & Whitney Air New Zealand Services \$2,250.00 as a contribution toward its legal costs.

Matthew Piper
Member of the Employment Relations Authority