

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 681
3300803

BETWEEN	YPC Applicant
AND	D & L DECORATORS (2021) LIMITED Respondent

Member of Authority: Alyn Higgins

Representatives: Alex Kersjes, advocate for the Applicant
Justin Cameron, counsel for the Respondent

Submissions received: 3 September 2025 from Applicant
19 September 2025 from Respondent

Determination: 24 October 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 6 August 2025¹, the Authority issued a determination dismissing the applicant YPC's claim to raise a personal grievance out of time but did find wage and holiday pay arrears owing to YPC and a breach by the respondent D&L Decorators (2021) Limited (D&L) under s130 of the Employment Relations Act 2000 (the Act) for a failure to provide YPC with compliant wage and time records. A penalty for this breach by D&L was also ordered to be paid to YPC.

[2] In that determination, the parties were encouraged to resolve any issue of costs between them, but the Authority did note that the preliminary view was that this may be a situation where it is appropriate that costs lie where they fall².

¹ *YPC v D&L Decorators (2021) Limited* [2025] NZERA 480.

² Above at [64].

[3] Despite this, the parties have not been able to resolve costs between themselves and have filed submissions as to costs for the Authority to determine.

The Parties' Submissions

YPC's Submissions

[4] YPC refers to having 'mixed success' with wage and holiday pay being found to be outstanding and cites this in support of YPC being the successful party and says that he would not have achieved this result without bringing his claim before the Authority. YPC invites the Authority to take this success as sufficient success for the purposes of awarding costs along with the public interest in parties being able to bring their claims before the Authority. YPC claims the half day daily tariff rate of \$2,250.00 along with the \$71.55 Authority filing fee.

D&L's Submissions

[5] D&L claims that they were the largely successful party in defending its position that YPC's personal grievance claim was out of time and that YPC's wage and holiday pay claim took approximately 10 minutes of the half day hearing with the rest of the time devoted to the out of time issue. D&L also refer to YPC's unreasonable behaviour pursuing a baseless claim, wasting the Authority's resources and evidential costs incurred by D&L.

Relevant Principles

[6] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Act. The usual principle for costs is that a successful party is entitled to a contribution towards their costs of representation for the Authority process.

[7] 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 principles set out in these 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 also not to be used as a punishment or expression of disapproval of the unsuccessful parties'

³ *PBO Limited v Da Cruz* [2005] 1 ERNZ 808.

⁴ [2015] NZEmpC 135 at 114.

conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award of costs. Awards made should also be consistent with the Authority's equity and good conscience jurisdiction⁵. Both parties accept that these principles should apply to the determination of costs.

Analysis

[8] The investigation meeting took one half day and was held in person. The applicant attended together with his representative and his father, and Mr Cameron appeared for the respondent, together with D&L's company director.

[9] While YPC succeeded in his claim for wages and holiday pay, he was not successful in his substantive claim for a personal grievance to be heard outside of the 90-day timeframe and this was the more significant issue in the investigation meeting as is clear from the Authority's determination⁶.

[10] The question of mixed success and an applicant's entitlement to costs has been resolved by the Employment Court⁷. The position is that any success for an applicant is sufficient success for the purposes of costs. However, the key difference from the present case is that the applicant in the *Coomer* case succeeded in a personal grievance claim and was accordingly awarded costs on this basis. That is not the situation in the present case.

[11] In respect of the wage and holiday pay claim and D&L's failure to provide compliant wage and time records, the Authority has already ordered a \$1,000 penalty to be paid by D&L to YPC. I also accept that YPC may not have achieved his wage arrears and holiday pay without bringing his claim before the Authority and it would also not be fair to discourage claimants from having to do so if the situation requires it. On this basis YPC should be reimbursed the Authority's filing fee for having to apply to the Authority to ultimately achieve his wages and holiday pay.

[12] Beyond that, stepping back to look at matters overall I do not consider that the submissions received, or circumstances require a departure from the Authority's preliminary view that this be a situation where it is appropriate that costs lie where they

⁵ *PBO Limited v Da Cruz* [2005] 1 ERNZ 808, pages 819 to 820.

⁶ Above n1

⁷ *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

fall. YPC should not have had to seek the intervention of the Authority in respect of the wage and time records and payments. D&L were also put to the cost of defending a personal grievance claim that was found to be out of time however the Act permits such a claim to be made by an applicant.⁸ Accordingly, no award of costs is made in favour of either party. Costs are to lie where they fall.

Orders

[13] D&L Decorators (2021) Limited is ordered to pay to YPC within 28 days of the date of this determination the sum of \$71.55 being the reimbursement of the filing fee.

Alyn Higgins
Member of the Employment Relations Authority

⁸ See s 114 (4) of the Act.