

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 692
3216639

BETWEEN	DEBORAH HANCOCK First Applicant
AND	CHRISTINE GIBSON Second applicant
AND	HENRICA RYAN Third Applicant
AND	JONES & SANDFORD TIMBER & HARDWARE (1999) LIMITED Respondent

Member of Authority:	Alyn Higgins
Representatives:	Liz Lambert, advocate for the Applicant Penny Swarbrick, counsel for the Respondent
Submissions received:	23 September 2025 from Applicant 5 September 2025 from Respondent
Determination:	29 October 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 6 August 2025¹, the Authority found that the applicants had not been unjustifiably dismissed from their employment with the respondent Jones & Sandford Timber & Hardware (1999) Limited (Jones & Sandford) and further that Jones & Sandford had not breached the individual employment agreements of the applicants. All of the applicants' personal grievance claims were unsuccessful.

¹ *Hancock and Ors v Jones & Sandford Timber & Hardware (1999) Limited* [2025] NZERA 478

[2] 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. 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

The Applicants' Submissions

[3] The applicants say that they were successful in the preliminary matter concerning whether their personal grievance claims had been raised within 90 days and are accordingly seeking costs for this, or alternatively as a set off to any costs payable to the respondent. The applicants also oppose the uplift in costs being sought by the respondent as the successful party in the substantive matters and essentially submit that (in the interests of justice and public interest) the Authority should either decline to award costs, or that costs should lie where they fall.

The Respondent's Submissions

[4] Jones & Sandford seek a total costs award of \$20,750, which is a significant uplift from the daily tariff approach. In support of this claim, Jones & Sandford submits that they were entirely successful in defending the applicants' substantive personal grievance and breach of contract claims and that only one (out of a total of 11) of the applicants' personal grievance and breach of contract claims were found to have been raised within time. Jones & Sandford also claim for time expended in submissions on the preliminary matter to determine whether the Applicants' personal grievances had been raised within time.

[5] Jones & Sandford further say the applicants' approach has resulted in it being put to unnecessary cost and inconvenience due to the applicants' repeated failure to comply with the Authority's directions, delayed service and new claims being lodged causing avoidable delays and procedural inefficiency for which the applicants were put on notice.

[6] The respondent submits that the exchange of submissions should be treated as a full day for costs purposes and say that the daily tariff for a three day hearing is the starting point.

Relevant Principles

[7] 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.

[8] 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*² as confirmed in *Fagotti v Acme and Co Limited*³. The principle 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 not to be used as a punishment or expression of disapproval of the unsuccessful parties' conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award of costs. Both parties accept that these principles should apply to the determination of costs.

Analysis

[9] The Authority has adopted a daily tariff approach to considering costs. This is well-established, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days⁴. The parties can expect the Authority to adhere to this approach, unless there are good reasons to depart from it. The daily tariff is accordingly the starting point for the Authority's determination of costs.

[10] The preliminary matter took over half a day and the investigation meeting for the substantive matter took two full days and both meetings were held in person. The applicants have also conceded that the matter resulted in changes and delays. While the applicants were found to have raised a personal grievance within time, Jones & Sandford was ultimately the successful party and is entitled to a contribution to its costs actually and reasonably incurred.

[11] The applicants were ultimately unsuccessful and some of the grounds in support of their claims were not well made out (such as the Bill of Rights, breach of privacy and

² *PBO Limited v Da Cruz* [2005] 1 ERNZ 808

³ [2015] NZEmpC 135 at 114.

⁴ For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

defamation claims etc). I also accept that there were some genuine reasons for some of the applicants' delays, but reasons of illness do not account for all of the delays. I am also satisfied that some aspects of the way in which the applicants conducted their case before the Authority resulted in Jones & Sandford being put to (in some cases avoidable) additional time and cost. This includes the applicants purporting to raise new issues in closing submissions that were not raised in the evidence of any of the applicants, nor advanced by the applicants in any way prior to the closing submissions.

[12] In assessing costs and looking at the matters overall, I consider the Authority's daily tariff for a three day hearing is an appropriate starting point being an amount of \$11,500. In addition, for the reasons referred to in the preceding paragraph, I consider that an uplift in costs is appropriate in this case. Jones & Sandford have claimed an uplift in costs in the amount of \$9,250.

[13] Stepping back to consider reasonableness, modest costs awards in the Authority, and parity with other cases, I conclude, in the circumstances of this case that an award of \$12,750.00 as a contribution to costs, which includes an uplift on the tariff in recognition of the, in some cases unnecessary, additional costs incurred by Jones & Sandford represents an appropriate costs award in the circumstances and I order the applicants (on a joint and several basis) to make this payment to Jones & Sandford.

Orders

[14] For the reasons set out above Deborah Hancock, Christine Gibson and Henrica Ryan are ordered, jointly and severally, to pay Jones & Sandford Timber & Hardware (1999) Limited within 28 days of the date of this determination the sum of \$12,750 as a contribution to costs.

Alyn Higgins
Member of the Employment Relations Authority