

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 711  
3277019

BETWEEN

UQB  
Applicant

AND

ACCIDENT  
COMPENSATION  
CORPORATION  
Respondent

Member of Authority: Rowan Anderson

Representatives: Applicant in person  
Barnaby Locke, counsel for the Respondent

Investigation Meeting: On the papers

Submissions: Up to and including 30 October 2025

Determination: 7 November 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Background and submissions**

[1] On 4 September 2025 the Authority issued a determination<sup>1</sup> in which I found, amongst other things, that the Accident Compensation Corporation (ACC) had breached terms of settlement entered into in terms of s 149 of the Employment Relations Act 2000 (the Act). Compliance orders were made and a penalty imposed.

[2] Costs were reserved. The parties have not been able to agree on costs, and UQB now asks the Authority for orders as to the costs they incurred in pursuing their claims against ACC.

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<sup>1</sup> *UQB V Accident Compensation Corporation* [2025] NZERA 550.

[3] UQB was self-represented but says they incurred costs of representation between 7 February 2024 and 19 August 2023. UQB says that the full costs incurred in relation to the proceedings, excluding attendance at mediation, is \$12,283.55. UQB seeks an uplift from the daily tariff having regard to what is said to have been unreasonable conduct by ACC in the proceedings.

[4] ACC claim that it is entitled to costs on the basis that it was mostly successful in defending the claims made by UQB and having regard to UQB declining to accept a *Calderbank* offer made on 7 October 2025. ACC submitted that the starting point for the Authority's daily tariff is \$2,500 and seeks an uplift on the basis of what it says was its success, the *Calderbank*, and what it says was conduct by UQB that increased its costs in the proceedings. It seeks a total contribution of \$3,250.

### **Costs principles**

[5] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.<sup>2</sup>

[6] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that *Calderbank* offers may be taken into account, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.<sup>3</sup>

[7] The daily tariff is usually taken as a starting point,<sup>4</sup> although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

### **Consideration**

[8] In the substantive determination issued I recorded that the parties could expect the Authority to determine costs using the starting point of a half day. I consider that the appropriate starting point. While on one view the proceedings were more involved than many involving compliance, it remains the case that no investigation meeting was convened and I do not consider the proceedings were of such complexity that a different

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>3</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

<sup>4</sup> Employment Relations Authority Practice Direction, August 2023, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>

approach is warranted. I also note that the half day is a starting point which may be subject to adjustment based on a range of factors.

[9] The daily tariff would see a contribution of \$2,250 for the half day.

[10] I turn first to the issue of success and where the appropriate starting point lies. UQB was successful. Penalties were imposed upon ACC and compliance orders issued in relation to breaches of the of the terms of settlement. While not all of UQB's claims were determined in his favour, I consider the fundamental issues associated with his statement of problem were resolved in his favour. The starting point is that, subject to costs having been incurred, UQB is entitled to a contribution towards them.

[11] I am satisfied that UQB incurred costs that exceed the sum claimed. I do not consider all of the sums claimed to be relevant for the purposes of the calculation of costs, including those that appear to be associated with preparation for mediation. However, for reasons which will become apparent I need to say more on that issue and I am satisfied that the costs actually incurred, regardless of any that might have been excluded, exceeds those claimed.

[12] A *Calderbank* offer was made by ACC on 7 October 2024. While acceptance of the offer would have resulted in a better financial outcome for UQB, at least when simply comparing the sum payable in the offer and those relevant to the determination issued, I decline to take the *Calderbank* offer into account. UQB was entitled to pursue the claims made and I find that the offer failed to take account of the fundamental issues involved. While it was expressed such that ACC would comply with the terms of the settlement agreements previously reached, UQB had taken issue with the extent of ACC's liability and obligations and that issue remained unresolved. I conclude that the rejection of the offer was not unreasonable having regard to all of the circumstances and the content of the offer made.

[13] I have seriously considered all of the submissions, both from UQB and ACC, as to whether there should be an adjustment to the starting point based on conduct. I decline to make any such adjustment. I summarise my reasons below:

- (a) UQB was entitled to pursue the issues raised in the Authority. While on one view some of the issues, including as to the limitation period, should have been resolved at an earlier stage, the same can be said in relation to matters

raised by ACC, for example as to whether the 2019 settlement agreement superseded the 2018 settlement agreement;

- (b) The conduct issues raised by ACC in my view largely go to UQB being largely self-represented. I also consider the conduct in question was not in anyway deliberate and that UQB was actively engaged in the proceedings, sought to assist the Authority, and was responsive when issues were raised;
- (c) While it may be said that some of the issues identified by UQB resulted in resolution of the proceedings being delayed, I am not satisfied they resulted in increased costs for UQB given the timing of the expiry of the professional representation; and
- (d) Having regard to the entirety of the proceedings and timing of the costs incurred, I am not satisfied that there was any unreasonable conduct such that impacted the costs incurred in any substantial way.

### **Orders**

[14] The Accident Compensation Corporation is ordered, within 28 days of the date of this determination, to make payment of \$2,250 to UQB as a contribution towards his costs.

Rowan Anderson  
Member of the Employment Relations Authority