

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 712
3281080 and 3281099

BETWEEN	ANDREA MITCHELL Applicant in 3281080
AND	PAUL JENKINS Applicant in 3281099
AND	LONE PINE FARMS LIMITED Respondent

Member of Authority: Rowan Anderson

Representatives: Lars Hansen and David Sutton, counsel for the Applicants
Andrew Laurenson, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and other information: Up to and including 8 October 2025

Determination: 7 November 2025

COSTS DETERMINATION OF THE AUTHORITY

Background and submissions

[1] On 3 September 2025 the Authority issued a determination¹ in which I found, amongst other things, that both Ms Mitchell and Mr Jenkins had been unjustifiably dismissed from their employment.

[2] Costs were reserved. The parties have not been able to agree on costs, and Ms Mitchell and Mr Jenkins now ask the Authority for orders as to the costs they incurred in pursuing their claims against Lone Pine Farms Limited (LPFL).

¹ *Mitchell and Anor v Lone Pine Farms Limited* [2025] NZERA 547.

[3] Ms Mitchell and Mr Jenkins seek a total contribution towards their costs in the sum of \$9,000 in addition to reimbursement of the filing fees. This is said to be based on a starting point of a single day tariff in relation to each of the separate applications. Both Ms Mitchell and Mr Jenkins were granted legal aid. It was submitted that the legal aid debts would be approximately \$5,352.34 and \$4,746.29, plus disbursements, for Ms Mitchell and Mr Jenkins respectively.

[4] LPFL submitted that Ms Mitchell and Mr Jenkins are entitled to make submissions to Legal Aid seeking waiver of the debt and that if that were to occur any order for costs would provide them a windfall. It was also submitted that costs are to be a contribution and not full indemnity, and that LPFL was not in a position to pay any award as a lump sum.

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.²

[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.³

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

Consideration

[8] Ms Mitchell and Mr Jenkins were successful in pursuing their claims and it is appropriate that costs follow the event. Separate applications were made and the Authority decided, without objection, to deal with the two matters together. The investigation meeting consumed one and a half days rather than two full days.

² Employment Relations Act 2000, Schedule 2, clause 15.

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

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

[9] The daily tariff would see a contribution of \$4,500 for the first day and \$1,750 of the half day. While separate applications were made, I consider the appropriate approach to costs is to use the standard tariff assessment for the second day rather than treating it as a separate first day. That approach is more consistent with the purposes of consolidating proceedings.

[10] I am satisfied that the legal aid debt is due. While there could be a waiver of that debt, that is not a matter I am satisfied will necessarily occur and I do not consider that a relevant consideration.

[11] I am not satisfied that there is any basis on which to make a costs order based on instalments, nor do I consider any application made to the Employment Court relevant for present purposes.

[12] I find that an award as to costs should be made of \$3,125 in relation to each applicant. That sum is consistent with both the tariff approach used by the Authority and reflects a contribution to costs as opposed to indemnity costs.

Orders

[13] Lone Pine Farms Limited is ordered, within 28 days of the date of this determination, to make payment of:

- (a) \$3,125 to Ms Mitchell as a contribution towards her costs; and
- (b) \$3,125 to Mr Jenkins as a contribution towards his costs.

Rowan Anderson
Member of the Employment Relations Authority