

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2025] NZERA 742
3364943**

BETWEEN RENATO MARTINS
 Applicant

AND THE BENCH TOP GUYS
 LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Alex Kerjes, advocate for the Applicant
 Miranda Harvey, counsel for the Respondent

Costs Submissions 30 October 2025 from the Applicant
 16 October 2025 from the Respondent

Determination: 17 November 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 18 September 2025 ([2025] NZERA 579), the Authority found that the Respondent, The Bench Top Guys Limited (TBTG), did not breach the Record of Settlement it had entered into with the Applicant, Renato Martins.

[2] In that determination I stated that I believed this to be an appropriate case for letting costs lie where they fell. However TBTG is seeking costs at the normal tariff rate of \$4,500.00 for a one day investigation in the Authority.

[3] The matter involved two separate portions of meeting time. Both were held by AVL. The first meeting was abandoned within a short period of time when it became apparent that Mr Martins required the assistance of an interpreter. The second, held on 5 September 2025 when an interpreter attended, involved slightly in excess of two hours of meeting time.

[4] Ms Harvey, on behalf of TBTG submits that on 11 August 2025 it made a Calderbank offer to Mr Martins.¹ The offer was on the basis that TBTG would settle on the basis of no penalty claim being made by Mr Martins, and each party being responsible for its own costs.

¹ *Calderbank v Calderbank* [1976] Fam 93 (CA)

[5] Mr Martins did not accept the Calderbank offer on the basis put forward and on 20 August 2025 put forward a Counter claim Calderbank Offer seeking a monetary award, contributions to his costs and an apology.

[6] TBTG did not accept Mr Martins's counter offer.

Principles

[7] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[8] Costs are at the discretion of the Authority². The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)*³.

[9] It is a principle set out in *Da Cruz* that costs are not to be used as a punishment. It is also a principle that costs are discretionary and awards made are consistent with the Authority's equity and good conscience jurisdiction.

Costs Award

[10] TBTG was the successful party in this case and costs usually follow the event.

[11] Turning to the Calderbank Offers it is necessary to consider what effect it should have upon the award of costs in this matter.

[12] The Calderbank offer made by TBTG after the first, aborted, investigation meeting but a few weeks in advance of the second investigation meeting. Accepting it meant that Mr Martins would be responsible only for his own costs in the matter.

[13] I consider that the Calderbank Offer should be given some weight but take into account that it was made after the first abortive investigation meeting when both parties would have incurred costs.

² *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622

³ *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808

[14] I therefore order only a slight uplift in costs based upon the Calderbank Offer made by TBTG.

[15] I take a half day investigation meeting as the appropriate starting place to calculate costs, and give a small uplift in respect of the Calderbank Offer.

[16] I order Mr Martins to pay to TBTG the sum of \$2,500.00 as costs pursuant to clause 15 of Schedule 2 of the Act.

Eleanor Robinson
Member of the Employment Relations Authority