

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2025] NZERA 799
3292299

BETWEEN LIAM WESTON
 Applicant

AND MCNZ GROUP LIMITED T/A
 WORKPLACE SOLUTIONS
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Alex Kersjes, advocate for the Applicant
 Ellie Stone representing the Respondent

Costs Submissions 11 November 2025 from the Applicant
 None from the Respondent

Determination: 10 December 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 28 October 2025 ([2025] NZERA 687), Mr Weston was the successful party and the Authority found that he been unjustifiably dismissed from his employment with the Respondent, MCNZ Group Limited t/a Workforce Solutions (MCNZ).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately, they have been unable to do so, and the Applicant filed submissions in respect of costs.

[3] The matter involved one day of an investigation meeting. Mr Kersjes on behalf of Mr Weston. is seeking an uplifted contribution to costs on the basis of a Calderbank offer that is a without prejudice save as to costs offer.¹

[4] Mr Kersjes further submits that an uplift in a contribution to costs is justified on the basis that the conduct of the Respondent unreasonably contributed to Mr Weston's costs.

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

The Calderbank Offer

[5] Mr Kersjes submits that the Calderbank Offer was sent to MCNZ on 7 August 2024. It offered to settle the matter in the sum of \$11,000.00 including costs.

[6] The Calderbank Offer remained open for acceptance until 5 p.m. on 14 August 2024. 2025. MCNZ did not accept the Calderbank Offer.

[7] It is submitted by Mr Kersjes that MCNZ's rejection of the Calderbank Offer resulted in Mr Weston facing further costs as a result of needing to continue his claim in the Authority and caused him additional stress.

The Respondent's conduct

[8] Mr Kersjes submits that MCNZ repeatedly submitted without prejudice material and referred to mediation discussions. This required assessment on the part of another Authority Member, causing additional expense to Mr Weston as a result of his representative needing to make related representations to the Authority in respect of the submitted material.

[9] It is further submitted on behalf of Mr Weston that MCNZ engaged in behaviour which was clearly designed to intimidate him e.g. by threatening to contact external agencies such as the Inland Revenue.

[10] Mr Weston is therefore seeking a contribution to costs in the sum of \$7,500.00.

Principles

[11] 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.

[12] 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.

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

[13] 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.

[14] Principles also include that costs normally follow the event. In this matter, Mr Weston was the successful party

The Calderbank Offer

[15] In determination ([2025] NZERA 687 MCNZ was ordered to pay Mr Weston monies including compensation, an unpaid notice period and interest. These sums exceeded the sum for which Mr Weston had offered to settle the matter in the Calderbank Offer.

[16] I consider that the Calderbank Offer offered MCNZ the opportunity to settle the matter in a sum less than he was subsequently awarded, and to have Mr Weston withdraw his application before the Authority heard the matter and both parties incurred further costs in either financial terms and/or time.. It was made with sufficient time prior to the Investigation Meeting for MCNZ to fully consider it.

[17] I observe that the Employment Court noted that the public interest in the fair and expeditious resolution of disputes would be adversely affected if parties were permitted to ignore without prejudice offers without costs being impacted.

[18] I consider that the Calderbank Offer should be accorded weight in balancing the various considerations in determining the level of a costs award.

[19] I further consider that the conduct of the Respondent throughout the matter in the Authority should be acknowledged as meriting a further slight uplift in a costs contribution award.

[20] The starting point for costs is the normal daily tariff as applied in the Authority. For a one day hearing this equates to \$4,500.00. I consider that the uplifted contribution to costs award sought by Mr Weston is reasonable in all the circumstances.

[21] **MCNZ is ordered to pay Mr Weston the sum of \$7,500.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.**

[22] **MCNZ is also ordered to pay Mr Weston the Authority filing fee in the sum of \$71.55.**

Eleanor Robinson
Member of the Employment Relations Authority