

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 81
3237299

BETWEEN	CORALEIGH PARKER Applicant
AND	NORTH SOUTH HOLDINGS LIMITED First Respondent
AND	HANSENS RESOURCE RECOVERY LIMITED Second Respondent

Member of Authority:	Claire English
Representatives:	Applicant in person Tom Jarman, counsel for the Respondent
Submissions received:	23 January 2025 from Applicant 20 January 2025 from Respondent
Determination:	17 February 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 20 November 2024, the Authority issued a determination in this matter, dismissing the applicant, Ms Parker's claims against both respondents.

[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. As the parties have been unable to reach agreement, the respondents have applied for an award of costs against Ms Parker.

[3] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days¹.

[4] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[5] The investigation meeting in this matter was for one day, and was held in person. Ms Parker attended, together with Mr Hansen and counsel representing both respondents.

[6] The respondents now seek an award of costs, in the total sum of \$8,000. It is submitted on their behalf that an uplift from the Authority's usual tariff for a one-day investigation meeting is warranted, on the grounds that Ms Parker declined a Calderbank offer made at an early stage in the proceedings, and that she declined the request that she pay costs at the rate of the daily tariff resulting in the need for the respondents to file in the Authority for costs.

[7] In response, Ms Parker says that she did offer to pay costs, by way of having an agreed sum deducted from the balance of unpaid invoices owed to her, and that Mr Hansen should be responsible for the costs of his own legal representation.

Principles

[8] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act). Costs are discretionary.

[9] 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 the above 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.

¹ For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

² [2005] 1 ERNZ 808.

³ [2015] NZEmpC 135 at 114.

[10] In this matter, the starting point is that costs follow the event. The respondents were successful in defending Ms Parker's claims. No orders were made in favour of Ms Parker. For the avoidance of doubt, when Ms Parker refers to an offer to pay costs by having a sum of money deducted from invoice "owed to me by [Mr Hansen]", this did not arise from the substantive determination of the Authority in this matter.

[11] The respondents have been successful, and are entitled to a contribution to their costs, at the rate of the daily tariff. For a one-day investigation meeting, this amounts to \$4,500.00.

[12] It is submitted that an uplift of a further \$3,500 is warranted, on the basis of Ms Parker's refusal of an early Calderbank offer, and her refusal to agree costs. While it is relatively common for the refusal of a Calderbank offer to result in an uplift to a costs award, such uplifts are invariably modest. Here the respondents have sought a significant uplift, which if awarded would amount to same as the tariff for a two-day investigation meeting.

[13] I am also not persuaded that the respondents needing to file an application for costs necessarily justifies an uplift, and consider it rarely appropriate in the Authority for the awarding of costs on a costs application, which might be suggested here.

[14] The starting point is an award of costs in favour of the respondents of \$4,500.00.

[15] I am not persuaded that the requested uplift of an additional \$3,500 is an appropriate level of uplift in all the circumstances. Instead, an uplift of \$500 is granted in respect of the refusal of the Calderbank offer. My view is that it is fair to say that if accepted, this would have reduced some costs, but in the context of the various disputes between the parties which clearly continue despite the Authority's substantive determination, no further uplift is appropriate.

[16] Orders for the payment of costs to the respondents in the total sum of \$5,000.00 are made.

Orders

[17] Ms Coraleigh Parker is ordered to pay to North South Holdings Limited and Hansens Resource Recovery Limited jointly within 28 days of the date of this determination the sum of \$5,000.00 (inclusive) as a contribution to costs.

Claire English
Member of the Employment Relations Authority