

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 816
3132635

BETWEEN

DAVID MICHAEL
OSBORNE
Applicant

AND

CALLAGHAN
INNOVATION RESEARCH
LIMITED
Respondent

Member of Authority: Geoff O'Sullivan

Representatives: David Osborne, for self
Peter Chemis and Emma von Veh, counsel for the
Respondent

Submissions received: Up to and including 3 November 2025

Determination: 17 December 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] By determination dated 17 October 2025, the Authority found that David Osborne had been unjustifiably disadvantaged as a result of shortcomings in the consultation process which affected Mr Osborne to his detriment. Callaghan Innovation Research Limited (Callaghan) was ordered to pay Mr Osborne a sum of \$15,000 compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).

[2] As part of its Determination, the Authority reserved its decision on costs. A timetable was set for memoranda to be filed if the parties were unable to resolve the issue of costs themselves. They have been unable to do so.

Costs Principles

[3] Clause 15 of schedule 2 of the Act gives the Authority the discretion to direct any party to a matter to pay to another party such costs and expenses as the Authority thinks reasonable.

[4] The unsuccessful party will usually have to contribute to the costs of the successful party as well as meeting their own costs. A daily tariff applied by the Authority sets a starting point from which relevant factors and principles may guide an upward or downward adjustment of the amount of costs awarded. The current tariff in place for costs is \$4,500 for the first day of any matter and \$3,500 for any proceeding days. This matter in essence took one day, accordingly the starting point for any cost award is \$4,500.

The Applicant's Submissions

[5] The Applicant claims costs of \$10,918. The Applicant was self-represented at the Investigation Meeting and generally under such circumstances the Authority would not make an award of costs or if it did so, it would not approach the tariff level. This is because generally in such circumstances there would be an absence of legal costs to be reimbursed. However, Mr Osborne's position is somewhat different.

[6] In the early days of Mr Osborne's personal grievance, he engaged a barrister and incurred legal costs of some \$7,268 plus disbursements of a further \$1,150, totalling some \$8,418.

[7] Mr Osborne then claims a further sum of \$2,500 for preparation, document management, and appearance time.

[8] Mr Osborne also submits that he made a Calderbank offer (a without prejudice save as to costs offer) for \$10,000 under s 123(1)(c)(i) of the Act, and \$4,500 plus GST towards legal costs. This offer was made on 4 November 2019 and rejected by Callaghan on 7 November 2019. The offer outlined two options, the first being reinstatement instead of \$10,000 compensation. Both options required a signed apology.

The Respondent's Submissions

[9] Callaghan acknowledges that the Investigation Meeting was for one day and accordingly a starting point for tariff costs is \$4,500. Callaghan notes, however, that Mr Osborne was self-represented and says he is therefore not entitled to scale costs (I take that to mean tariff costs). It is further submitted that the legal advice received by Mr Osborne prior to his decision to represent himself, involved advice about a much broader range of issues including those later determined by the Employment Court¹.

[10] Callaghan submits that it was awarded costs of \$24,330.20 by the Court which Mr Osborne is in the process of paying off. However, prior to the Investigation Meeting on 24 March 2025, Callaghan issued Mr Osborne its own Calderbank letter and on 10 March 2025 offered to settle Mr Osborne's claim by:

- a. Forgiving the costs of \$24,330.20 ordered by the Employment Court; and
- b. Repaying to Mr Osborne any sums he had already paid in relation to the repayment program he had entered into. Mr Osborne was given to 17 March (one week) to decide whether he would accept the offer.

[11] Mr Osborne rejected the offer quite obviously without the benefit of legal advice. This was because Mr Osborne seemed to believe he was not allowed to settle the matter this way because the Court had ordered him to pay costs. Mr Osborne seemed to think this prevented Callaghan from being able to make the offer.

[12] Callaghan says that in all the circumstances it should be awarded the standard tariff costs of \$4,500 for a one day investigation meeting.

Analysis

[13] The starting point is that Mr Osborne was the successful party in the determination, albeit he failed in his claim of unjustified dismissal. He had incurred legal costs and accordingly is entitled to an award of costs from the other party. Mr Osborne's barrister made an offer of settlement well in advance of the Investigation Meeting date. Both sides would have been better off if the matter had settled at that stage. Callaghan especially would have avoided the costs incurred in the Employment

¹ *Osborne v Callaghan Innovations* [2024] NZ EmpC 116

Court hearing and the Investigation Meeting before the Authority. The invoices Mr Osborne has forwarded in support of his costs claim do not provide detail, however, on the face of it all seem to relate to legal advice Mr Osborne received in preparing and prosecuting his claims.

[14] Mr Osborne received a Calderbank offer of settlement on 10 March 2025 which was higher than the award he received in the Authority. Mr Osborne was ultimately given until the start of the Investigation Meeting on 24 March 2025 (the email incorrectly refers to 2024) to accept the offer. Had Mr Osborne accepted the offer, he would on the face of it have been better off.

[15] By the time of the updated Calderbank offer, Mr Osborne had dispensed with his barrister and was running his case himself. Accordingly, he did not incur any further legal costs after that date.

[16] As indicated before, if Callaghan had accepted Mr Osborne's offer, it is likely to have saved itself significant legal costs as well as the \$5,000 difference between the offer in terms of s 123(1)(c)(i) of the Act of \$10,000, and the \$15,000 awarded by the Authority.

[17] Weighing up all of the above, and acknowledging that Mr Osborne was a litigant in person, I consider an award of costs against Callaghan of \$3,000 to be appropriate.

Orders

[18] I order Callaghan Innovation Research Limited to pay David Osborne, within 28 days, the sum of \$3,000 as a contribution towards the costs he incurred in pursuing his claims together with the filing fee of \$71.55.

Geoff O'Sullivan
Member of the Employment Relations Authority