

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 839
3387765

BETWEEN	TE RINA McCLUTCHIE Applicant
AND	KIFFS AGVENTURES LIMITED First Respondent
AND	ANTHONY KIFF Second Respondent
AND	DANELLE KIFF Third Respondent

Member of Authority: Jeremy Lynch

Representatives: Hamish Burdon, advocate for the Applicant
Christie McGregor, counsel for the Respondents

Submissions and Other Information Received: 19 December 2025 for the Applicant
11 December 2025 for the Respondents

Date of Determination: 22 December 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Te Rina McClutchie lodged a claim in the Authority seeking an order for interim reinstatement to her previous position, and to the onsite accommodation provided under her employment agreement.

[2] She initially sought these orders on a without notice basis.

[3] Despite naming Anthony Kiff and Danelle Kiff as second and third respondents respectively, Ms McClutchie did not seek any orders against Mr or Mrs Kiff.

[4] Ms McClutchie's former employer Kiffs Agventures Limited, and Mr and Mrs Kiff (the respondents) opposed the interim orders sought, and lodged affidavit evidence defending the various claims against them.

[5] The Authority issued its determination of Ms McClutchie's application for interim reinstatement on 2 September 2025 (the interim determination).¹ In this determination, the Authority declined to grant Ms McClutchie's interim reinstatement.

[6] Costs in the interim determination were reserved, pending the outcome of the Authority's substantive investigation.

[7] Since the interim determination was issued, Ms McClutchie has changed representatives from Gregory Bennett to her new advocate, Hamish Burdon.

[8] The Authority held a case management conference with the parties on 13 November 2025, during which Mr Burdon advised that his client was no longer seeking reinstatement, and sought an adjournment to any further timetabling directions in order that settlement with the respondents could be explored.

[9] On 3 December 2025, Mr Burdon advised that Ms McClutchie wished to withdraw her application before the Authority, noting that the issue of costs remained unresolved.

[10] The respondents now seek an order for a contribution towards their costs in respect of the interim determination.

Costs principles

[11] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner.² Continuing principles guiding the Authority's approach to costs include:

- the statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction;
- equity and good conscience are to be considered on a case-by-case basis;

¹ *Te Rina McClutchie v Kiffs Agventures Limited & Anthony Kiff & Danelle Kiff* [2025] NZERA 544.

² *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808, and *Faggotti v Acme & Co Limited* [2015] NZEmpC 135.

- costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- costs generally follow the event;
- awards of costs will generally be modest; and
- frequently, costs are judged against a notional daily tariff.³

The positions of the parties

Ms McClutchie

[12] For Ms McClutchie it is submitted that the Authority's full daily tariff would be a reasonable contribution to the respondents' costs, nothing that although she is employed, Ms McClutchie has very limited resources.

The respondents

[13] For the respondents it is submitted that they have been put to the expense of responding to several claims entirely without basis, all of which have now been withdrawn, including claims in relation to Healthy Homes Standards in both the Authority and the Tenancy Tribunal, despite being on notice that the Authority has no such jurisdiction to hear or determine Healthy Homes Standards claims.

[14] In addition, the respondents submit that they have incurred additional expenses as a result of Ms McClutchie's former advocate Mr Bennett's actions in contacting the Dairy Industry Awards body in relation to this matter, as well as contacting an unrelated party (the Trust which owns the farm property on which the respondents' business is located).

[15] The respondents submit that as a result of Ms McClutchie's meritless claims, costs incurred in this matter have been significantly more than in usual proceedings of this type.

³ Employment Relations Authority "Practice Directions of the Employment Relations Authority Te Ratonga Ahumana Taimahi" www.era.govt.nz/assets/upload/practice-direction-of-era.
<https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>

[16] The respondents have provided copies of invoices for their representation costs which show that their actual costs far exceed the Authority's daily tariff.

[17] The respondents submit the starting point should be the full daily tariff, plus an uplift. The respondents seek a total costs award of \$10,000.00.

Costs outcome

Starting point

[18] As the respondents were the successful party in the interim determination, they are entitled to a consideration of costs.

[19] The investigation meeting in this matter was concluded in less than half a day. The starting point for a consideration of costs is therefore \$2,250.00, being one half of the of the Authority's notional daily tariff of \$4,500.00, before any upward or downward adjustment.

Attempts to resolve

[20] There is no evidence of the respondents turning down any settlement offer from Ms McClutchie.

Conduct

[21] The Authority accepts that the conduct of Ms McClutchie (and/or her representative), has unnecessarily increased the costs of the respondents. There was no need to list Mr and Mrs Kiff as parties to this matter (especially given no remedies were sought against them). In addition, the Healthy Homes Standards claims, and the decision to contact the Dairy Industry Awards body in respect of Mr and Mrs Kiff, as well as the unrelated third party, can only have been the cause of additional and unnecessary attendances.

Adjustment to the tariff

[22] The daily tariff can be adjusted for relevant factors. Stepping back to look at matters overall, it is reasonable in the circumstances of this case that there is an uplift in the costs awarded.

[23] I consider that an award of \$4,500.00 is fair and appropriate. This is in effect, an uplift to the full daily tariff rate, and is consistent with Ms McClutchie's own submission.

[24] Such an award reflects that the respondents were the successful parties, but also acknowledges that certain actions of or on behalf of Ms McClutchie, unnecessarily increased costs. It is also consistent with the principle that costs awards in the Authority are generally modest.

Orders

[25] Within 28 days of the date of this determination, Te Rina McClutchie is ordered to pay to Kiffs Agventures Limited, Anthony Kiff and Danelle Kiff the sum of \$4,500.00 in total, as a contribution to their costs.

[26] How the respondents apportion the total sum awarded is a matter for them.

Jeremy Lynch
Member of the Employment Relations Authority