

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 844
3313080

BETWEEN DAVID BAhLER
 Applicant

AND TRANSPORTATION
 AUCKLAND
 CORPORATION LIMITED
 (trading as NZ BUS)
 Respondent

Member of Authority: Peter Fuiava

Representatives: Gary Froggatt, advocate for the Applicant
 Simon Lapthorne, counsel for the Respondent

Submissions and information received: 1 December 2025 from the Applicant
 21 October and 28 November 2025 from the
 Respondent

Determination: 22 December 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] This determination resolves the question of costs following an investigation meeting in which NZ Bus, for the reasons set out in *Bahler v Transportation Auckland Corporation Limited*,¹ was the successful party.

[2] NZ Bus seeks an uplift in costs in the total amount of \$10,000. While the parties were given additional time to reach an agreement on costs, they have been unable to do so and consequently a costs determination from the Authority is required.

[3] While Mr Bahler has appealed the Authority's substantive determination to the Employment Court, a challenge does not operate as a stay on costs. Even so, there is no prejudice to Mr Bahler if costs are determined now because if the substantive

¹ [2025] NZERA 610.

determination is overturned on appeal, this costs determination would then no longer stand. In *Maheta v Skybus NZ Ltd*, the Court of Appeal held that cost awards are generally parasitic on the substantive determination to which they relate in the sense that they are assessed on the basis the substantive determination is correct.² However, the position would be different if the costs determination itself was incorrect irrespective of the substantive determination.

Costs submissions

[4] On behalf of NZ Bus, Mr Laphorne has provided several invoices that show his client has incurred actual costs totalling \$73,089.50 plus GST. Counsel notes that the investigation meeting lasted two days (4 February and 2 May 2025), that NZ Bus incurred unnecessary costs in opposing Mr Bahler's claim for reinstatement which he withdrew at the investigation meeting, and that the complexity of the matter and volume of documents and the additional time required to draft written submissions warrant an uplift of the notional tariff of \$8,000 to \$10,000 in all the circumstances.

[5] On Mr Bahler's behalf, Mr Froggatt advised that the parties had been unable to reach agreement on costs, that Mr Bahler is unemployed, has no disposable income and has a health-related issue.

Costs principles

[6] The Authority has the power under sch 2 cl 15 of the Act to award costs. However, the discretion to order a party to pay costs to another must be exercised on a principled basis. Those principles are well settled and are outlined in the Authority's Practice Note,³ and Practice Direction,⁴ both of which are publicly available online.

[7] Informing the Authority's approach to costs is the leading decision of *PBO v Da Cruz* in which the Employment Court established key principles for the Authority to consider when determining costs. For this determination, those key principles relevantly comprise:⁵

- There is a discretion as to whether costs are awarded and in what amount.

² *Maheta v Skybus NZ Ltd* [2022] ERNZ 1005 at [12].

³ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

⁴ www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf.

⁵ *PBO Ltd (formerly Rush Security Ltd v Da Cruz* [2005] 1 ERNZ 808 at [44].

- The discretion is to be exercised in accordance with principle and not arbitrarily.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- That costs generally follow the event.
- That awards will be modest.
- That frequently costs are judged against a notional daily rate.

Costs analysis

[8] The starting point is that NZ Bus was the successful party in the determination and being the successful party is entitled to an award of costs from the other party.

[9] Consideration must then be given to the length of the investigation meeting that took place over two separate days that were both full meeting days. In accord with the notional tariff, a starting point of \$8,000 applies being \$4,500 for the first day of the investigation meeting and \$3,500 for the second day.

[10] Conduct that unnecessarily increases costs for the other party is a sufficient reason for an upwards adjustment in costs. Witness statements from two of NZ Bus's witnesses show that they responded to Mr Bahler's reinstatement claim which was withdrawn on the first day of the investigation meeting. A case management conference was held on 9 October 2024 and NZ Bus's witness statements were timetabled to be filed by 22 November 2024 with the investigation meeting scheduled for 4 February 2025.

[11] Given the reasonably compressed time frame in which witness statements were to be filed and the effect of the Christmas and New Year holiday period in which there may not have been much contact between Mr Bahler and his representative, it would not be appropriate to award an uplift in costs particularly when costs in the Authority are intended to be modest and not punitive in nature.

[12] The filing of closing written submissions in the Authority after an investigation meeting has ended has become so commonplace that without more, it is not in and of itself a basis to justify an increase in costs.

[13] I acknowledge Mr Froggatt's advice about Mr Bahler's current circumstances. While no supporting information was provided to the Authority, this costs determination will either stand or fall depending on the outcome of his *de novo* challenge in the Employment Court. Weighing all of the above, I make no uplift but fix costs at \$8,000.

Costs Order

[14] For the reasons given above, the Authority orders David Bahler to pay Transportation Auckland Corporation Limited trading as NZ Bus costs of \$8,000 as a contribution towards its actual and reasonable costs.

Peter Fuiava
Member of the Employment Relations Authority