

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 106
3287259

BETWEEN CORNELIUS O'DRISCOLL
Applicant

AND REHAB CO MOBILE
LIMITED
First Respondent

AND AIAH JOHN GBENDA-
CHARLES
Second Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Applicant in person
Costas Matsis for the Respondents

Submissions received: 27 January 2026 from the Applicant
22 December 2025 from the Respondent

Date: 26 February 2026

COSTS DETERMINATION OF THE AUTHORITY

[1] In November 2025, the Authority issued its determination as to Cornelius O'Driscoll's personal grievance claims.¹ In that determination, the Authority declined Mr O'Driscoll's personal grievances.

[2] The parties were encouraged to resolve any issues of costs between themselves, but have been unable to do so. Rehab Co Mobile Limited and Aiah John Gbenda-Charles (the Respondents) sought a brief extension to file costs outside of the time frame provided informing the Authority the parties were in discussions but had not yet reached agreement.

¹ *O'Driscoll v Rehab Co Mobile and Gbenda-Charles* [2025] NZERA 746.

[3] The Authority was notified the parties had been unable to agree on costs and an application for costs was lodged by the Respondents. Mr O’Driscoll lodged submissions opposing costs.

Costs

[4] The Authority has the power under clause 15 of Schedule 2 of the Act to award a contribution towards the costs of the successful party. Costs are a matter of discretion and that discretion is to be exercised in accordance with principle and not arbitrarily. The main principle in the exercise of the discretion is that costs follow the event. If a party is successful, they will be entitled to an award of costs. Frequently costs are judged against a notional daily tariff.²

Rehab Co Mobile and Mr Gbenda-Charles claim for costs

[5] The Respondents says there are factors justifying an increase in costs and seek an award in the amount of \$9,000.00 plus disbursements of \$379.13 being the costs of flights between Auckland and Wellington for a witness. The Respondents submit an uplift is justified in relation to the following:

- (a) The claim against Mr Gbenda-Charles had no prospect of success;
- (b) The decision to continue the claim against Mr Gbenda-Charles in the absence of any evidence to support that claim unnecessarily increased costs;
- (c) After objecting to Ms Short’s evidence no steps were taken to substantiate the objection causing delays and increasing costs due additional scheduled attendances with the Authority;
- (d) Witness statements for two witnesses who were to be called as witnesses did not attend on the day to give evidence;
- (e) New documents were produced at the investigation meeting and attached to final submissions;

² <https://www.era.govt.nz/determinations/awarding-costs-remedies>

- (f) Final submissions referred to cases that were unable to be located.

Mr O’Driscoll seeks to have costs lie where they fall

[6] Mr O’Driscoll seeks to have costs lie where they fall or at most an award equal to an undisclosed amount the parties agreed in December 2025. He says he acted in good faith, the issues raised were genuinely contested and required determination by the Authority. He says any delay was related to a lack of resources because he was self-represented and he was in a situation of financial stress.

[7] He also says he made genuine and timely attempts to resolve the matter without the need for determination by the Authority but the Respondents’ elected to proceed to determination. Because of this it would be unfair and inconsistent with Authority practice to penalise a party who actively sought early resolution on multiple occasions.

Costs analysis

[8] The Respondents were the successful and it is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party’s costs. The starting point for costs based on the Authority’s daily tariff is \$4,500.00 for the first day of an investigation meeting. From that starting point the Authority can consider whether there are factors justifying an increase or decrease in costs. The investigation meeting lasted for one day.

[9] This is a case where an uplift is warranted due to the delays and additional steps that extended the investigation of the matter causing additional cost to the Respondents through the need to prepare to respond to issues raised and for witnesses who were to attend that did not eventuate.

[10] Providing references in oral submissions to cases that did not exist or could not be found also increased costs for the Respondents. Despite attention being drawn to the Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals³ at the investigation meeting further references to cases that did not exist were made in final written submissions. This resulted in further costs to the Respondent.

³ Courts of New Zealand “Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: None-lawyers” (7 December 2023).

[11] No supporting information about Mr O'Driscoll's financial situation or detail of any settlement offers were provided and as such a decrease for those factors would not be appropriate.

[12] Noting that Mr O'Driscoll was a litigant in person, I consider a modest uplift is appropriate. Taking into account all the relevant circumstances, a fair costs award in Rehab Co Mobile's and Mr Gbenda-Charles favour, is \$6,500.00.

[13] The Respondents have also claimed a disbursement for witness travel in the amount of \$379.13 and attached a supporting invoice. The circumstances of this case warrant an order for disbursements in that amount because the of the challenge to the witness' evidence was not resolved before the investigation meeting. The reasons for that are not of the Respondents' making.

Order

[14] Connor O'Driscoll is to pay a total of \$6,500.00 to Rehab Co Mobile and Mr Gbenda-Charles as a contribution towards costs incurred plus reimbursement of witness travel in the amount of \$379.13 within 28 days of this determination.

Sarah Kennedy - Martin
Member of the Employment Relations Authority