

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 125  
3131454

BETWEEN

MICHAEL REDDY  
Applicant

AND

HAMILTON CITY COUNCIL  
Respondent

Member of Authority: Eleanor Robinson

Representatives Alex Hope and Edmond Carrucan, counsel for the Applicant  
Tom Jarman and Ella Burney, counsel for the Respondent

Costs Submissions 28 February 2026 from Applicant  
17 February 2026 from Respondent

Determination: 3 March 2026

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination dated 22 December 2025 (Determination [2025] NZERA 837) the Authority found that the Applicant, Mr Michael Reddy, had not been unjustifiably dismissed or unjustifiably disadvantaged by the Respondent, Hamilton City Council (HCC).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between them. However, the parties have not been able to resolve the issue of costs and have filed costs submissions.

[3] This matter involved a two-day investigation meeting. Mr Jarman, on behalf of HCC, accepts that Mr Reddy is legally aided, but nonetheless is seeking a contribution to costs at the notional daily tariff rate in the Authority of \$8,000.00 for a two-day investigation on the basis of exceptional circumstances.

[4] Mr Reddy was legally aided during the course of the Investigation Meeting. In these circumstances it is normally the case that a recovery of a contribution to costs is unavailable unless there are 'exceptional circumstances' pursuant to s 45 of the Legal Services Act 2011 which states as follows:

- (1) If an aided person receives legal aid for civil proceedings, that person's liability under an order for costs made against him or her with respect to the proceedings must not exceed an amount (if any) that is reasonable for the aided person to pay

having regard to all the circumstances, including the means of all the parties and their conduct in connection with the dispute.

- (2) No order for costs may be made against an aided person in a civil proceeding unless the court is satisfied that there are exceptional circumstances.

[5] The exceptional circumstances referred to in s 45(2) of the Legal Services Act 2011 are set out in s 45 (3) as follows:

(3) In determining whether there are exceptional circumstances under subsection (2), the court may take account of, but is not limited to, the following conduct by the aided person:

- (a) any conduct that causes the other party to incur unnecessary cost;
- (b) any failure to comply with the procedural rules and orders of the court;
- (c) any misleading or deceitful conduct;
- (d) any unreasonable pursuit of one or more issues on which the aided person fails;
- (e) any unreasonable refusal to negotiate a settlement or participate in alternative dispute resolution;
- (f) any other conduct that abuses the processes of the court.

(4) Any order for costs made against the aided person must specify the amount that the person would have been ordered to pay if this section had not affected that person's liability.

(5) If, because of this section, no orders for costs is made against the aided person, an order may be made specifying what order for costs would have been made against that person with respect to the proceedings if this section had not affected that person's liability.

### *Submissions*

[6] HCC submits that being legally aided does not automatically indemnify a party from liability for costs provided there are exceptional circumstances pursuant to s 45 (2). It is submitted for HCC that there are exceptional circumstances that apply, citing the following conduct by Mr Reddy that caused it to incur unnecessary costs:

- i. An application for urgency by Mr Reddy prior to the termination of his employment, and maintaining urgency was still necessary post-termination;
- ii. Seeking to have 42 witnesses for the Authority's investigation. After the Authority's decision that only four of the 42 witnesses were appropriate to be called, applying for judicial review of the Authority's decision; and
- iii. The unreasonable pursuit by Mr Reddy of his claims in the Authority.

[7] It is submitted for Mr Reddy that:

- i. An application for urgency before or after dismissal is not an exceptional circumstance that would trigger s 45(2) Legal Services Act 2011;
- ii. Proposing to call 42 witnesses at an investigation meeting is not an exceptional circumstance. The application for judicial review is not conduct that causes the other party to incur unnecessary cost as it took place in a different court and is the subject of a costs order in that Court;<sup>1</sup> and
- iii. The Authority made no finding that Mr Reddy's pursuit of one or more of the issues pursued by him were unreasonable<sup>2</sup>.

[8] It is submitted for Mr Reddy that HCC increased costs by failing to file closing submissions prior to the commencement of the Authority's investigation, and subsequently seeking time to submit these at a separate submissions hearing which added to the costs of the hearing and were unnecessary.

[9] On that basis Mr Reddy seeks a declaration that costs of \$7,000.00 would be appropriate had he not been legally aided.

## **Principles**

[10] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act) which states:

### **15 Power to award costs**

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[11] The principles and the approach adopted by the Authority on which an award of costs is made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup>. It is a principle set out in *Da Cruz* that costs are modest and reasonable. It is also a principle that costs are not to be used to punish the unsuccessful party.

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<sup>1</sup> Legal Services Act 2011 s 45(3)(a)

<sup>2</sup> Above n 1 s 45(3)(d).

<sup>3</sup> *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

## Determination

[12] HCC is seeking costs against Mr Reddy, a legally aided person on the basis that exceptional circumstances apply.

[13] In *Awa v Independent News Ltd (No 2)* the High Court held that exceptional circumstances mean something “quite out of the ordinary”.<sup>4</sup> This view was upheld by the Court of Appeal in *Laverty v Para Franchising Limited*<sup>5</sup>

[14] In the circumstances of this case, I accept that a party may apply for urgency during an Authority investigation process. Whilst this may occur at a stage prior to termination, applications for urgency do occur post-termination, frequently in association with an application seeking interim reinstatement. Of itself I do not find an application for urgency to be an exceptional circumstance.

[15] The application to have 42 witnesses was addressed by the Authority. The decision that witnesses were not required for the Authority reduced the number of witnesses in the Authority’s investigation and as a consequence the length of hearing time required.

[16] The Authority’s decision on the relevance and number of witnesses required for its investigation was judicially reviewed and I accept that, as a consequence of the application for judicial review, matters were halted in the Authority whilst that process took place. However as the costs for that matter were dealt with outside of the Authority’s process, it would not be appropriate for that costs issue to impinge on an application for costs in the Authority.

[17] Mr Reddy was unsuccessful in the issues he brought before the Authority and as a consequence was not awarded the remedies which he had been seeking. Applicants may or may not succeed in their claims before the Authority. I do not find claims not being successful in the Authority to be an exceptional circumstance especially as there was no finding that Mr Reddy’s pursuit of his claims was unreasonable.

[18] In respect of Mr Reddy’s submission in support of a declaration that costs of \$7,000.00 would be appropriate had he not been legally aided, I accept that HCC was not in a position to proceed on the costs aspect at the conclusion of the investigation. However it is not unusual for representatives to request that submissions in respect of costs to be provided after the conclusion of the investigation meeting, especially when the circumstances of the matter are complex or multi-faceted.

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<sup>4</sup> *Awa v Independent News Ltd (No 2)* [1996] 2 NZLR 184.

<sup>5</sup> *Laverty v Para Franchising Limited* [2006] 1 NZLR 650.

[19] Nonetheless I accept that counsel for Mr Reddy had been in position to provide costs submissions prior to the commencement of the investigation meeting as requested, whereas counsel for HCC was not and needed to request additional time to prepare its costs submission.

*Costs award if Mr Reddy had not been legally aided*

[20] I record that, if s 45(2) of the Legal Services Act 2011 had not limited Mr Reddy's liability to pay costs to HCC, I would have awarded costs using the notional daily tariff rate in the Authority on the basis of a two-day investigation meeting with a slight adjustment downwards.

[21] I accordingly indicate that I would have considered a \$7,750.00 contribution to HCC's costs to have been appropriate.

Eleanor Robinson  
Member of the Employment Relations Authority