

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 129
3329641

BETWEEN

MARILOU LEWIS
Applicant

AND

TKW COLLECTIVE PTY
LIMITED
Respondent

Member of Authority: Matthew Piper

Representatives: James Lewis, representative for the Applicant
Beverley Edwards, counsel for the Respondent

Submissions and other information received: 28 October 2025 and 4 December 2025 from the Applicant

22 October 2025, 26 November 2025 and 1 January 2026 from the Respondent

Determination: 4 March 2026

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 16 October 2025 the Authority issued a determination finding Ms Lewis had not succeeded in establishing her personal grievance claims¹. Costs were reserved and the parties were encouraged to resolve the issue between themselves.

¹ *Marilou Lewis v TKW Collective PTY Limited* [2025] NZERA 653

[2] When the parties were unable to resolve costs by direct exchange, TKW Collective PTY Limited (TKW) lodged a memorandum dated 22 October 2025 seeking costs at the daily tariff rate of \$4,500.00.

[3] On 28 October 2025 Ms Lewis lodged a memorandum opposing an order for costs. In that memorandum, among other matters, Ms Lewis raised the question of whether TKW had actually incurred costs specifically relating to responding to her claims against it.

[4] Accordingly, on 19 November 2025 the Authority called for production of invoices showing the legal costs incurred by TKW as part of preparing for and attending the Authority's investigation meeting. The Authority directed that the invoices were to be lodged and served by no later than 28 November 2025 and that Ms Lewis would then have until 5 December to make any further submissions on matters arising.

[5] On 26 November 2025, invoices rendered to TKW related to preparing for and attending the Authority's investigation of Ms Lewis' claims were lodged with the Authority. The total amount of those invoices exceeded \$4,500.00 (plus GST).

[6] On 4 December 2025 Ms Lewis lodged a further memorandum providing her view that costs should not be awarded against her because she had elected to challenge the Authority's determination de novo and because the respondent had sought security for costs in the Court in relation to that challenge.

[7] Ms Edwards provided comment on behalf of TKW on 1 January 2026 regarding this issue and said that any application for security for costs was a separate matter to whether costs may be awarded in the Authority.

[8] An issue was raised by Ms Lewis regarding whether Ms Edwards' comments had been received within the relevant timeframe. I have formed a view that as a matter of fact they were and that, in any case, there is no prejudice to Ms Lewis in Ms Edwards' comments being considered by the Authority.

Relevant law

[9] Clause 15 of Schedule 2 of the Employment Relations Act 2000 allows the Authority to award such costs and expenses as it considers reasonable. This discretion

must be exercised by the Authority on a principled basis, taking into account the circumstances of the particular case.

[10] When assessing costs in this matter, the Authority has had regard to the well established costs assessment principles identified by the Employment Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz*². These factors include that an unsuccessful party will normally be required to contribute towards the successful party's actual legal costs, that costs follow the event and that costs awards should be modest.

[11] The Authority usually adopts a notional tariff based approach to costs. This approach is well publicised. Given the investigation was set down for a single day, the starting point for costs is the daily tariff of \$4,500.000.

Should costs be awarded?

Ms Lewis' position

[12] Ms Lewis' position was that TKW was represented by the Employers and Manufacturers Association (EMA) and was therefore not entitled to costs on the basis of her understanding that this was a subscription service which allowed for access to legal services. She said an award of costs in favour of the respondent would amount to "double dipping" because it had paid its legal costs by paying its subscription to the EMA.

[13] However, whether TKW was represented by the EMA or not, TKW produced invoices showing its legal costs in responding to Ms Lewis' claims exceeded \$4,500.00. As the successful party, it is eligible to potentially recover these costs.

[14] Secondly, Ms Lewis claimed that applying the Authority's daily tariff approach would be incorrect because the hearing was not a full day after a brief adjournment in the morning before the investigation meeting started. The adjournment was less than half an hour.

[15] The investigation meeting involved hearing from three witnesses and took most of the day. Submissions were lodged in writing in the subsequent weeks.

² [2005] ERNZ 808

[16] I am satisfied that the short adjournment at the start does not mean the full tariff for a one day investigation meeting should not apply.

[17] Lastly, as noted above, Ms Lewis argued that her challenge to the Authority's determination of 16 October 2025 means the Authority should not make an order as to costs³.

TKW's position

[18] TKW's submission was that it was the successful party, had paid invoices rendered by Ms Edwards to defend Ms Lewis' claims and that the Authority should apply its usual daily tariff for a one day investigation meeting.

[19] It submitted that any matters before the court are not related to the costs sought in the Authority.

Outcome

[20] Ms Lewis' challenge of the Authority's determination of 16 October 2025 does not justify a departure from the general principle that costs follow the event. This is the case even where TKW has sought security for costs against Ms Lewis.

[21] The Authority's jurisdiction to award costs is well established and the correct approach is for issue of costs to be determined by the Authority. If a party wishes to challenge that determination it may do so via the Court.

[22] TKW was the successful party and costs should follow the event. As set out above, no compelling reason has been provided that would justify a departure from the usual daily tariff.

³ See page 12 of the Employment Court's Practice Directions for a discussion on how it deals with costs in relation to challenged determinations.

Orders

[23] Within 28 days of the date of this determination Ms Lewis is ordered to pay TKW Collective PTY Limited \$4,500.00 as a contribution toward its legal costs.

Matthew Piper
Member of the Employment Relations Authority