

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2026] NZERA 137  
3289279

BETWEEN

MARY OUTRAM  
Applicant

AND

ZIB DIGITAL LIMITED  
Respondent

Member of Authority: Antoinette Baker

Representatives: Penny Swarbrick and Rachel Irwin, counsel for the Applicant  
Daniel Erikson, counsel for the Respondent

Submissions Received: 2 February 2026 from Applicant  
17 February 2026 from Respondent

Date: 5 March 2026

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**DETERMINATION OF THE AUTHORITY**

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[1] This determination deals with a costs application after the determination issued by me on 12 December 2025 ended the employment relationship problem between the parties (my determination)<sup>1</sup>.

**Interim nonpublication lapsed**

[2] In the above referred determination I declined to make a permanent order for non-publication in the applicant's favour for reasons given in the determination. I made an interim order<sup>2</sup> for 28 days to allow for any challenge. I included that at the end of 28 days the

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<sup>1</sup> *KMW v Zib Digital Limited* [2025] NZERA 806.

<sup>2</sup> See above at [5].

interim order would lapse unless there was a further order of the Authority or the Employment Court. The time of 28 days has passed. There being no further orders and no notification of a challenge to the decision not to order permanent non publication, the interim order made on 12 December 2025 has lapsed and no orders restricting publication now attach to these proceedings.

### **Costs**

[3] In my determination<sup>3</sup> I found that the respondent (ZIB) unjustifiably dismissed Ms Outram. I ordered \$20,000.00 in compensation and \$27,962.30 gross in lost wages. I found a breach of good faith under s 4(1A)(c) of the Act but declined to award the penalty claimed. Ms Outram's claims under heads of misrepresentation relating to statements she claimed were made pre-employment were unsuccessful as were the remedies sought.

[4] The parties were asked to resolve costs between themselves. Costs have not been resolved. Ms Outram has now asked for an award of costs. ZIB was given a time frame to reply and did so. I will consider the application now.

### **Costs principles in the Authority**

[5] A party should receive a reasonable contribution to costs incurred in achieving a successful result. Costs in the Authority are discretionary, modest, and are not a mechanism to punish the other party.

[6] The Authority uses a notional daily tariff adjusting the tariff up or down as appropriate depending on the case.<sup>4</sup> Such an adjustment may take into consideration a liable party's means to pay costs, settlement offers made by either party, additional preparation required if a case is complex, and any conduct of a party that has unnecessarily increased costs.

### **Consideration of application**

[7] Ms Outram seeks to have costs awarded to her at the tariff but with an uplift.

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<sup>3</sup> *KMW v Zib Digital Limited* [2025] NZERA 806.

<sup>4</sup> <https://www.era.govt.nz/determinations/awarding-costs-remedies>; and <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf> at page 5.

*Starting point based on the tariff*

[8] The current tariff applied to a one-day Authority investigation meeting is \$4,500.00 with subsequent meeting days at \$3,500.00. The tariff is considered a starting point for assessing a reasonable contribution to the legal costs incurred by a party preparing for and taking part in an investigation meeting but generally not to include preparation and attendance at mediation.<sup>5</sup>

[9] The investigation meeting according to Authority notes took two days with the second day finishing mid-afternoon at approximately 2.20 pm and reconvening for oral submissions on 12 September 2025 for two hours from 9.00 to 11.00am. A written version of any submissions was asked to be provided just prior to the reconvened submissions meeting.

[10] The applicant asks that I consider extending the timeframe for the tariff starting point to three days to take in the further time taken for preparation and presentation of submissions beyond the two days set for the investigation meeting. The respondent refers to the early finish on the second of those two days and that the two hours for submissions could be taken as part of the second day. I note that parties were alerted at the phone conference call<sup>6</sup> to be prepared to provide oral submissions after evidence at the investigation meeting so preparation at least in part will have occurred before the investigation meeting. Based on the timetable I find the appropriate starting point for costs to award to Ms Outram, is based on \$8,000.00 for two days taking into account submissions.

*Calderbank offer*

[11] The applicant asks that I consider an uplift due to a letter to settle all matters on a ‘without prejudice except as to costs’ basis. This is usually called a Calderbank offer.

[12] The above letter was sent on 19 June 2024 and set out a proposal that included the strength of Ms Outram’s claim for unjustified dismissal and included the following:

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<sup>5</sup> See above.

<sup>6</sup> Directions of the Authority dated 17 April 2025 at [8].

- a. a proposal to settle all matters with a mediator signed off record of settlement<sup>7</sup> that would include ‘non disparagement’ and ‘confidentiality’ clauses;
- b. that ZIB pay Ms Outram \$25,000.00 compensation under s 123(1)(c) of the Employment Relations Act 2000 (the Act); \$30,000.00 in lost wages under s 123(1)(b) of the Act; and \$8,000.00 as a contribution to Mr Outram’s costs.

[13] The proposal to settle was stated as open for acceptance until 24 June 2024. Some further communication occurred. What is before me is a letter dated 3 July 2024 from ZIB rejecting that Ms Outram had a strong case for unjustified dismissal stating it followed a fair process and did not predetermine matters. It rejected the amounts Ms Outram sought to settle on calling them ‘unrealistic and extravagant’ and proposed that Mr Knights of ZIB directly engage with Ms Outram in a ‘without prejudice’ one on one discussion. ZIB sought a response whether this would be acceptable otherwise ZIB said it would discuss at mediation. I have nothing before me about any counter offers made to Ms Outram’s proposal.

[14] The respondent submits that the amount offered as a settlement was in fact less than the amount directed by the Authority for Ms Outram’s claim of unjustified dismissal. Ms Outram offered a total of \$55,000.00 to settle matters in terms of potential remedies for the unjustified dismissal claim. I determined her grievance remedy as a total of \$47,692.30. I accept that ZIB was ordered to pay \$7,307.65 less in remedies than what the proposal to settle offered, a not insignificant difference.

[15] I then consider that for Ms Outram it is submitted that potential costs may result in a conclusion that the June 2024 offer was similar and reasonable to have accepted. I have already concluded that the reasonable starting point for the tariff is \$8,000.00. Adding the same costs to the mix here, the difference is not close. The total proposed to settle was \$63,000.00. Adding the \$8,000.00 in costs to what I determined means that ZIB would pay \$6,308.30 less than if it had accepted the proposed settlement in June 2024 at a very early stage before mediation. Even if, as I believe I am being asked to consider, a recorded transcript of a meeting held was then available ought to have shown the represented ZIB it had predetermined the dismissal and was

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<sup>7</sup> I take this reasonably to be a record of settlement under s 149 of the Employment Relations Act 2000.

unjustified to dismiss, the investigation I conducted had the further issue to consider which was ZIB's claim of then correcting this earlier failure.

[16] Based on the above I do not consider there should be an uplift to the starting point at tariff of \$8,000.00.

*Increase in tariff for poor conduct by the respondent*

[17] While for Ms Outram I am asked to consider the estimate of \$3,450 as an uplift to the tariff being costs expended to seek more information from ZIB during the restructuring process I have little to support this. I also note again that costs in the Authority relate to matters relating to reasonable preparation and attendance at the investigation.

[18] While it is submitted for Ms Outram that I should consider an award for 'special damages' because of what is claimed was a sham redundancy process which became clear at the investigation meeting and something ZIB ought to have admitted earlier, I am not satisfied this matter falls within a category to award an uplift for this. The matter was investigated and determined and ZIB had its opportunity to present its defence to the claims. The claims also included a not insignificant financial claim for misrepresentation which did not succeed.

[19] Ms Outram submits that conduct by the respondent delaying mediation ought to uplift an award of costs to her. While I can see that it took what seemed to be well over a year for the parties to get to mediation, potentially only prompted by a December 2024 Authority direction to do so, again, the tariff approach considers costs as a reasonable estimate relating to preparation and attendance at the investigation and not mediation.

[20] I do not consider I should increase the award from the starting point of \$8,000.00 for poor conduct by ZIB.

*Reduction in costs award for Ms Outram*

[21] It is submitted for the respondent that I should reduce any award to Ms Outram due to the time taken to have responded to her failed misrepresentation claim. I find she was overall successful in her claim and have not reduced any costs award to her. To an extent I have

referenced this issue above in terms of time taken to bring this matter to a resolution balanced with claims that ZIB delayed making itself available for mediation.

### **Outcome**

[22] Based on the above I order ZIB within 28 days from the date of this Determination to pay Ms Outram \$8,000.00 as a contribution towards her costs.

Antoinette Baker  
Member of the Employment Relations Authority