

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2026] NZERA 170  
3314880

BETWEEN	JIMMY NELSON Applicant
AND	THE DIGGER MAN LIMITED Respondent

Member of Authority:	Claire English
Representatives:	Alex Kerjes, advocate for the Applicant Callum Reid for the Respondent
Submissions received:	16 January 2026 from Applicant 17 February 2026 from Respondent
Determination:	23 March 2026

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 19 December 2025, the Authority issued a determination in this matter, making an award of \$720.00 in wages and \$5,000 in compensation in favour of the applicant.

[2] In that determination, the parties were encouraged to resolve any issue of costs between them. The Authority made reference to its usual practice of applying the daily tariff to determine costs, and I noted that the investigation meeting lasted for “somewhat less than half a day”. In the event, the parties have not been able to resolve costs between themselves, and the applicant seeks an award of costs.

[3] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days<sup>1</sup>.

[4] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[5] The investigation meeting in this matter was for, at the most generous, half a day, and was held in person. The applicant attended together with his representative, and Mr Reid, the owner-operator of the respondent, attended in person.

[6] The applicants seek a costs award of \$3,500, plus the reimbursement of the Authority's filing fee. The respondent submits that the company has no money or assets at this stage due to an on-going lack of work, and refers to the mental toll this has taken on Mr Reid.

### **Principles**

[7] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act). The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*<sup>2</sup> as confirmed in *Fagotti v Acme and Co Limited*<sup>3</sup>, namely that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful parties conduct.

[8] Costs are to follow the event. In this case, the applicant was the successful party. Therefore he is entitled to a contribution to costs, and to the reimbursement of the filing fee.

[9] The next question is to consider the appropriate starting point for such a contribution to costs. The investigation meeting took place over less than half a day,

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<sup>1</sup> For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

<sup>2</sup> [2005] 1 ERNZ 808.

<sup>3</sup> [2015] NZEmpC 135 at 114.

and was completed before the lunch break. As I have indicated above, an allowance of half a day would be generous. This would amount to a starting point of \$2,250.00.

[10] The applicant submits that an uplift of \$1,250 should be granted in addition to this on the grounds that the respondent delayed in providing wage and time records, and only did so when directed by the Authority. This amounts to a requested uplift of some 55%.

[11] I have considered the matter. I do not accept that the conduct of the respondent added significantly to the hearing time, or that such a significant uplift is warranted especially in circumstances where Mr Reid engaged with the Authority to understand what records were acceptable and required, and where the uplift requested is out of proportion to the wages actually awarded.

[12] Standing back and considering the matter, I take the view that an award of costs at the rate of half of daily tariff remains appropriate, and that given the time actually spent at hearing this is sufficient to recognise any additional delay.

### **Orders**

[13] The Digger Man Limited is ordered to pay to Mr Jimmy Nelson within 28 days of the date of this determination the sum of \$2,250.000 (inclusive) as a contribution to costs, plus the sum of \$71.55 as the reimbursement of the filing fee.

Claire English  
Member of the Employment Relations Authority