

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2026] NZERA 171
3344120

BETWEEN	FZT Applicant
AND	BHN Respondent

Member of Authority:	Claire English
Representatives:	Warwick Reid, advocate for the Applicant Jen Jermy for the Respondent
Submissions received:	17 January 2026 from Applicant Up to 10 February 2026 from Respondent
Determination:	23 March 2026

COSTS DETERMINATION OF THE AUTHORITY

[1] On 7 January 2026, the Authority issued a determination in this matter, declining to uphold the applicant's claims of constructive dismissal and/or unjustified disadvantage. No awards were made.

[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 one full 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 days¹.

[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 took place over one day and was held in person.

[6] The respondent seeks a costs award of \$13,080.60, which it says is the amount of costs incurred in the matter from the date of a Calderbank offer it made to the applicant which was rejected.

[7] The applicant submits that the Authority should apply the daily tariff without uplift, and that it was reasonable for the applicant to reject the offer, as it did not attempt to address the remedies sought by her in a meaningful way and provided her with only a nominal sum. The Calderbank offer has been provided. It provided for a full and final settlement of any and all claims without admission of liability or fault, in return for a compensatory sum of \$1,000 and a “written reference”.

Principles

[8] 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*² as confirmed in *Fagotti v Acme and Co Limited*³, 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.

[9] Costs are to follow the event. In this case, the respondent was the successful party, and is entitled to a contribution to its costs.

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

² [2005] 1 ERNZ 808.

³ [2015] NZEmpC 135 at 114.

[10] The next question is to consider the appropriate starting point for such a contribution to costs. The investigation meeting ran for one day. This amounts to a starting point of \$4,500.

[11] The respondent requests the sum of \$13,080.60 in costs. This is an uplift of almost 350%. The two reasons advanced in support are that this represents the entirety of the respondent's costs after a certain date, and the rejection of the Calderbank offer discussed above.

[12] The correct starting point in this matter is the Authority's daily tariff of \$4,500. I must then consider whether the actions of the applicant so significantly prolonged the hearing that an uplift of some 350% is required, or if the refusal of the Calderbank offer was so unreasonable as to require an uplift of that significance.

[13] I have considered the matter. I do not accept that the conduct of the applicant added significantly to the hearing time or to the cost and difficulty of this matter. No uplift is required on this ground. I also do not consider that the refusal of the Calderbank offer can be said to be unreasonable having regard to the amount offered and where even the non-monetary component, being a "written reference" without more, was not a significant advance on what the applicant might have reasonably expected to receive without further assurance or intervention.

[14] Standing back and considering the matter, I take the view that an award of costs at the rate of the daily tariff remains appropriate, especially as the outcome that the respondent might expect is to a contribution to its costs rather than indemnity for a specific amount.

Orders

[15] FZT is ordered to pay to BHN within 28 days of the date of this determination the sum of \$4,500.000 (inclusive) as a contribution to its costs.

Claire English
Member of the Employment Relations Authority

