

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 184
3220981

BETWEEN KAY ROBSON-THOMAS
Applicant

AND CHRIST'S COLLEGE
CANTERBURY
Respondent

Member of Authority: Sarah Blick

Representatives: Karen Glass and Erika Whittome, advocates for the applicant
Dean Kilpatrick and Jane Freeman, counsel for the respondent

Investigation Meeting: On the papers

Information and submissions received: 12 February 2026 from the applicant
26 February 2026 from the respondent

Determination: 27 March 2026

COSTS DETERMINATION OF THE AUTHORITY

[1] On 18 December 2025 the Authority issued a determination finding it did not have jurisdiction to determine Kay Robson-Thomas' personal grievance claims. It also found her breaches of contract claims were not established.¹

[2] The parties were given an opportunity resolve the issue of costs between them, which has not been possible. Christ's College Canterbury (the College) has applied for costs.

¹ *Robson-Thomas v Christ's College Canterbury* [2025] NZERA 829.

[3] Ms Robson-Thomas has filed a challenge in the Employment Court in relation to the Authority's substantive determination. There is no reason before me why the issue of costs in the Authority cannot be dealt with now. Having received costs submissions from both parties, they are now determined on the papers.

Costs principles

[4] The Authority has the power under clause 15 of Schedule 2 of the Employment Relations Act 2000 to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.

Discussion

[5] The College submits there should be an uplift in costs due to two attempts to resolve Ms Robson-Thomas' claim on a without prejudice save as to costs basis, that it made which would have avoided the need for the investigation meeting and for the Authority to determine costs.

[6] The first offer was made on 2 April 2025. The College says that offer was acknowledged as received by Ms Robson-Thomas' representative, and counsel for the College followed up on the first offer on 6 May 2025. That offer was not accepted. The second offer was made on 18 July 2025, shortly after the investigation meeting had concluded.

[7] The College submits it is entitled to recover its costs since the first offer, being up to the determination date of 18 December 2025. A breakdown of the costs incurred

since the first offer and itemised invoices recording the fees were included with the College's submissions.

[8] The College says despite its best endeavours to avoid the need for the Authority to investigate and determine the matter, Ms Robson-Thomas chose to pursue her claims which resulted in these costs being incurred unnecessarily. It was submitted such an award would not be punitive, but modest and reflecting that the claims of Ms Robson-Thomas need not have proceeded given the quantum of the offers made to Ms Robson-Thomas in the first and second offer. Further, the College was completely successful in its defence of Ms Robson-Thomas' claims.

[9] In the alternative, Ms Robson-Thomas submits that an award of costs should be made at a level close to the costs incurred since the first offer, but significantly above the daily tariff.

[10] Also in the alternative, the College submits that that an award for costs should be made at the daily tariff amount for two days, but with submissions having been provided in writing at a later date, it is entitled to recover costs for two and a half days investigation meeting.

[11] The College was completely successful in defending the claims before the Authority. It has been put to significant expense and is entitled to a contribution to costs incurred.

[12] This matter took up close to two full days of investigation meeting. In light of Ms Robson-Thomas' representative's circumstances, it is not appropriate to increase that by a further half day tariff amount. The appropriate starting point is the daily tariff amount for a two-day investigation meeting, being \$8,000.

[13] It was submitted on Ms Robson-Thomas' behalf that she was not recalcitrant when she declined the two offers made to her. Further, she adopted a principled approach, believing that her claims were meritorious and that she was entitled to be compensated for the financial loss and emotional harm caused by the termination of her employment. It was submitted that while it could be argued Ms Robson-Thomas' approach was not pragmatic, it was nevertheless genuine. I accept that was the case. However, her decision to reject settlement offers came at her own risk.

[14] The first offer was made with sufficient time prior to the investigation meeting for Ms Robson-Thomas to fully consider it. It made clear its position that there was no evidence Ms Robson-Thomas had raised any claims of unjustified disadvantage as alleged and/or within the limitation periods. The amount offered was at a reasonable level and had it been accepted, would have avoided costs relating to preparation for the investigation meeting and of course the meeting itself. It should be accorded weight in balancing the various considerations in determining the level of a costs award.

[15] The second offer was made at a higher amount in the days after the investigation meeting at a point when the bulk of the College's costs had already been incurred. Ms Robson-Thomas would, however, have been in a position to avoid a costs award in its entirety had she accepted it.

[16] The award of costs principally sought by the College would effectively amount to an award of indemnity costs, being full payment of actual costs. The tests for an award of indemnity costs are high, requiring exceptional conduct.² I do not accept the conduct here reaches that threshold.

[17] Balancing the relevant principles regarding a "steely approach" to cases where the unsuccessful party did not accept an earlier, better settlement offer and the need for costs awards in the Authority to be modest, an uplift of \$2,000 on the tariff amount is appropriate in the particular circumstances of this case. This brings costs to \$10,000.

[18] Ms Robson-Thomas has provided an affirmed affidavit outlining her personal circumstances and financial circumstances which include credit card debts. She refers to having credit card debt and that while she undertakes some freelance work, which she says runs at a loss after expenses are taken into account. It was submitted Ms Robson-Thomas is impecunious, partially in consequence of debts which were incurred following the termination of her employment.

[19] I understood the submission for Ms Robson-Thomas to be that due to her circumstances, costs should lie where they fall. The Authority was referred to the Employment Court's decision in *Thebe v Health New Zealand*.³ However, that judgment was in relation to an application for a stay of execution of a costs determination of the Authority. The application was granted and costs in relation to

² *Bradbury v Westpac Banking Corp* [2009] NZCA 234 at [28].

³ *Thebe v Health New Zealand - Te Whatu Ora* [2025] NZEmpC 72.

that application were ordered to lie where they fall. It does not support the submission that costs should lie where they fall in respect of a substantive Authority matter such as this.

[20] Ms Robson-Thomas further submitted that to impose costs when she is already suffering significant financial hardship would be a breach of the Authority's statutory obligations to uphold the guiding principles of equity and good conscience. However, I note the observation of the Court:⁴

... the fact that a costs award would impose undue financial hardship on an unsuccessful litigant is not, in my view, decisive. Even accepting that in this jurisdiction an unsuccessful party's current financial position is relevant to an assessment of costs, like other considerations it must be weighed in the exercise of the Court's discretion. The interests of both parties, and broader public policy considerations, must also be taken into account. ...

[21] The question of capacity of an unsuccessful party to pay costs, in the particular circumstances of each case, therefore, needs to be weighed with other relevant factors. In this case the principles concerning the need for costs in the Authority to be relatively modest and to give effect to unreasonably rejected settlement offers should be taken into account. Those factors weight strongly against a downward adjustment of the limited upward adjustment already made to the tariff rate.

Outcome

[22] Kay Robson-Thomas is ordered to pay Christ's College Canterbury \$10,000 as a contribution towards its legal costs.

Sarah Blick
Member of the Employment Relations Authority

⁴ *Tomo v Checkmate Precision Cutting Tools Ltd* [2015] NZEmpC 2 at [22].