

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 188  
3369184

BETWEEN	LILLIAN SHORTER Applicant
AND	WAIHEKE ISLAND SUPPORTED HOMES TRUST Respondent

Member of Authority:	Nicola Craig
Representatives:	Bridget Smith and Owen Posthuma, counsel for the applicant Giles Brant, counsel for the respondent
Submissions received:	27 February 2026 from the applicant 13 March 2026 from the respondent
Determination:	30 March 2026

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The Authority's determination**

[1] On 30 January 2026 the Authority issued a determination resolving issues between Lillian Shorter and the Waiheke Island Supported Homes Trust (WISH).<sup>1</sup>

[2] The Authority determined:

- WISH did not undertake specified unjustified actions to Ms Shorter's disadvantage
- Ms Shorter was unjustifiably dismissed by WISH

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<sup>1</sup> *Lillian Shorter v Waiheke Island Supported Homes Trust* [2026] NZERA 54.

- Remedies of six months' lost wages (less 25% deduction for contribution) and \$18,750 compensation (after that contribution was deducted) were awarded.

[3] The parties were encouraged to resolve the question of costs by agreement but resolution has not been reached.

[4] Submissions were received on behalf of Ms Shorter seeking an award of costs.

[5] WISH then provided costs submissions.

### **Ms Shorter's costs application**

[6] Ms Shorter seeks costs of \$19,863.98 – assessment of tariff costs of \$15,000, an uplift of \$3,000, costs on costs of \$1,000, disbursements of \$292.42 along with the Authority's filing fee of \$71.56. Ms Shorter's actual costs substantially exceed the amount of costs she seeks.

[7] Submissions assess the notional daily tariff for this matter as being based on four days of investigation meeting, amounting to \$15,000.

[8] Ms Shorter was successful in her central claim – unjustified dismissal. And evidence overlapped significantly between the various claims, so no reduction is warranted on the basis of a lack of success in some aspects.

[9] Ms Shorter's counsel was ready and willing to proceed with submissions at the close of the investigation meeting or immediately after but WISH's counsel was not ready and not available to make submissions for a further month after the investigation meeting. Counsel for Ms Shorter also proposed that, to avoid delay, oral submissions were not necessary but WISH's counsel insisted on providing lengthy oral submissions.

### **WISH's response on costs**

[10] WISH's position is that the Authority should let costs lie where they fall, this being within the Authority's discretion.

[11] It considers costs were not reasonably incurred and unnecessary cost was incurred. Claims of disreputable and dishonest conduct were pursued. Ms Shorter was unsuccessful in a considerable number of the issues she pursued in the Authority. A

broad and extravagant approach was used, submitted to be in an endeavour to obtain leverage for settlement.

[12] WISH seeks an award of \$1,500 for the preparation of its costs submissions.

### **The Authority's costs principles**

[13] The Authority has the power to award costs.<sup>2</sup> This power is discretionary but must be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* principles guiding the Authority's approach to costs are outlined including:

- 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 based on a notional daily tariff.<sup>3</sup>

### **Costs analysis**

[14] The starting point is the tariff based on the length of the investigation meeting. The notional daily tariff allows for \$4,500 for the first day and \$3,500 for subsequent days.

[15] The investigation meeting here was held over four days, including the hearing of submissions – warranting a \$15,000 starting point.

[16] An additional day is sought on behalf of Ms Shorter for oral submissions time. However, the oral submissions time has already been incorporated in the assessment above.

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, cl 15.

<sup>3</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

[17] Costs on costs are not usually awarded. An offer to settle costs which was not accepted would not usually warrant an award of costs on costs in the Authority and there is nothing here to justify a different approach.

[18] Both parties contributed to some extent to making the investigation meeting longer than would have been strictly necessary. What would otherwise have been Ms Shorter's remedies were reduced by her contribution to the situation giving rise to the grievance.

[19] Ms Shorter was unsuccessful in a number of the issues she pursued. However, she did establish she was unjustifiably dismissed and exploration of that required an understanding of historical arrangements, which took some time. She did not achieve her reinstatement remedy but was awarded substantial other remedies. In the absence of other means to achieve this result, success on those terms is still success.<sup>4</sup>

### *Conclusion*

[20] Ms Shorter is entitled to receive a contribution of \$15,000 towards her costs.

[21] No information was provided regarding the nature of disbursements but Mrs Shorter is entitled to be reimbursed for the Authority's filing fee.

### **Orders**

[22] The Waiheke Island Supported Homes Trust is ordered to pay Lillian Shorter within 21 days of the date of this determination:

- \$15,000.00 as a contribution to her costs; and
- \$71.55 for the Authority's filing fee.

Nicola Craig

Member of the Employment Relations Authority

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<sup>4</sup> *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.