

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 189  
3339440 & 3339480

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| BETWEEN | AARON WALLACE<br>Applicant in 3339440                      |
| AND     | PHONESAVANH WALLACE<br>Applicant in 3339480                |
| AND     | TANG & SON LIMITED<br>Respondent in 3339440 and<br>3339480 |

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| Member of Authority: | Robin Arthur  |
| Representatives:     | David Cain, advocate for the Applicants<br>Sikuong Khammy for the Respondent    |
| Submissions:         | From the Applicant on 12 March 2026 and from the<br>Respondent on 26 March 2026 |
| Determination:       | 30 March 2026   |

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination issued on 12 February 2026 the Authority ordered Tang & Son Limited (TSL) to pay remedies for unjustifiably dismissing Aaron Wallace and Phonesavanh Wallace.<sup>1</sup> The determination reserved the issue of costs and set a timetable for lodging memoranda if the parties could not resolve that matter between themselves. It also advised the parties they could expect the Authority, if asked to do so, to determine costs on its usual notional daily rate of \$4,500 for the one-day investigation meeting held, unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>2</sup>

[2] The parties did not resolve costs between themselves. Mr and Mrs Wallace lodged a memorandum seeking a costs award of \$7,000. This amount comprised the

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<sup>1</sup> *Wallace & Wallace v Tang & Son Limited* [2026] NZERA 67.

<sup>2</sup> See [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies).

\$4,500 daily tariff and an additional \$2,500 sought because TSL had not accepted settlement offers made by Mr and Mrs Wallace which would have resolved the matter before the Authority investigation meeting. Their settlement offers were for an amount lower than they were later awarded in the Authority's determination.

[3] In reply TSL submitted:

- (i) Costs should be reserved pending the outcome of a challenge to the Authority's determination TSL has filed in the Employment Court;
- (ii) No 'uplift' should be applied to the daily rate because TSL had not accepted the settlement offers made by Mr and Mrs Wallace;
- (iii) The amount spent on representation costs by Mr and Mrs Wallace, shown in an invoice from their advocates, "should not automatically become the amount payable by [TSL]";
- (iv) The amount sought as costs was too high because it would cause financial hardship for the business; and
- (v) Any costs award should be limited to a modest contribution only.

### **Factors**

[4] In determining costs the Authority applies well-established tenets to the particular circumstances of the case.<sup>3</sup> Those tenets recognise that a successful party should receive a contribution to its reasonably incurred costs and expenses; costs should generally be modest and may not be used to punish an unsuccessful party; the nature of the case may allow for an order that costs lie where they fall; and the Authority may use its notional 'daily rate' as a starting point to assess costs.

[5] Undue rigidity in applying this daily rate can be avoided by making upward or downward adjustments appropriate to the particular case. Those adjustments may take account of settlement offers made by either party, the financial means of a liable party to pay costs, the preparation required in particularly complex matters and whether the conduct of any party unnecessarily increased costs incurred.

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<sup>3</sup> Employment Relations Act 2000, Schedule 2 clause 15(1) and [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies).

## **Assessment**

### *Challenge not a reason for delaying costs award in Authority*

[6] On 12 March 2026 TSL filed a challenge to the Authority's determination in the Employment Court. Filing a challenge is not, in itself, a reason for the Authority not to complete the proceedings before it by determining costs in relation to its investigation. Rather, it is generally more efficient and effective for the parties, the Authority and the court for any reserved costs issue to still be determined in the Authority so that any challenge, by either party, to the costs outcome may also then be before the court at the time it considers the substantive challenge. If the court upholds the outcome reached in the Authority, the issue of costs in the Authority need not be brought back for completion. If the court reaches a different outcome than the Authority, the court may then adjust or revoke the costs order made by the Authority.

[7] The court's practice directions, at part 11, explain the options for both parties in relation to any challenge to the Authority's cost determination when there has been a challenge to the Authority's substantive determination.

### *The daily tariff is the appropriate starting point for assessment of costs*

[8] As the successful parties Mr and Mrs Wallace were entitled to an award of costs and expenses. The Authority's usual daily tariff is the appropriate starting point for assessing their costs for the investigation of their relatively straight forward personal grievance applications.

[9] They provided a copy of an invoice from their advocates showing their representation costs totalled \$16,003. These included the costs and expenses of their representative paying the fees for lodging their applications, attending an Authority case management conference, preparing witness statements and documents and attending the investigation meeting. The Authority's daily tariff of \$4,500 for the one-day meeting is a modest contribution to those actual costs reasonably incurred for an investigation of this type.

[10] An award at the level of the tariff also addresses TSL's submission that the representation costs incurred by Mr and Mrs Wallace "should not automatically become the amount payable" in costs.

*Failure to accept settlement costs warranted an uplift in costs*

[11] TSL's failure to accept settlement offers from Mr and Mrs Wallace was a factor which required an uplift of the daily tariff.

[12] The Authority's determination ordered TSL to pay Mr Wallace \$40,000 as lost wages and \$18,000 as compensation for distress caused by his unjustified dismissal. The determination ordered TSL to pay Mrs Wallace \$19,448 as lost wages and \$18,000 as distress compensation for her unjustified dismissal.

[13] In October 2024, after attending mediation and before lodging their personal grievance applications in the Authority, Mr and Mrs Wallace had both offered to settle their claims for considerably lower amounts than eventually awarded in the Authority's determination. Mr Wallace sought payment of \$23,386 lost wages and \$13,000 compensation. Mrs Wallace offered to settle for \$17,900 lost wages and \$10,000 compensation. They also each sought \$3,000 as a contribution to their costs.

[14] Both offers were made on a "without prejudice save as to costs" basis, reserving the right to disclose the offer if an Authority investigation was held and costs had to be determined.

[15] In light of the outcome in the Authority determination, those offers to settle were clearly reasonable. If TSL had accepted them, the company, Mr and Mrs Wallace and the Authority would all have been spared the considerable time and expense incurred in the Authority investigation.

[16] The Authority and the courts have long recognised that a party which has refused a reasonable settlement offer and is ultimately unsuccessful in the position it took should then contribute towards the costs incurred by the successful party. In the Authority this is typically achieved by an 'uplift' in the tariff rate by a proportion that is consistent with the general approach that costs should be modest and is proportionate to the amounts which may be achieved in remedies or other outcomes.

[17] Mr and Mrs Wallace submitted an increase of at least 50 per cent of the tariff was an appropriate uplift in their case, citing the Authority's determination in *Scott v E*

*Cycles (NZ) Limited* as an example of a costs award being increased by that rate to reflect failure to accept a reasonable settlement offer.<sup>4</sup>

[18] Accepting that submission as applying the relevant principles and how they are implemented in practice, the appropriate award for costs in this case is \$6,750. To that amount should be added full reimbursement of the specific expense of the fee of \$71.55 they each paid to lodge their applications in the Authority. The resulting total for costs and expenses is \$6,893.10.

*No reduction in costs for alleged hardship*

[19] The final factor for assessment in this case was whether any downward adjustment should be made because payment of that amount would, in TSL's submission, cause financial hardship for its business and affect its ability to continue operating and supporting current staff.

[20] TSL provided no evidence to support its submission on hardship. Even if it had, the prospect that an order for costs could cause some financial difficulty for the company is not a decisive factor in assessment of an award. It is one factor among others.<sup>5</sup> In the circumstances of this case, the requirement to provide the successful parties with a modest and proportionate amount as a contribution to their costs, reached by applying the tariff and a limited uplift, outweighed the alleged financial hardship such an award might cause. No reduction in the award is made on that basis.

**Order**

[21] Within 28 days of the date of this determination TDL must pay \$6,893.10 to Mr and Mrs Wallace as a contribution to their costs and expenses.

Robin Arthur  
Member of the Employment Relations Authority

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<sup>4</sup> [2023] NZERA 693.

<sup>5</sup> *Stevens v Hapag-Lloyd (NZ) Limited* [2015] NZEmpC 28 at [106].