

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 213
3319580

BETWEEN LJB
 Applicant

AND EBD
 Respondent

Member of Authority: Jeremy Lynch

Representatives: Adrian Plunket, advocate for the Applicant
 RAC for the Respondent

Investigation Meeting: On the papers

Submissions Received: 24 and 25 March 2026 from the Applicant
 22 and 28 March 2026 from the Respondent

Date of Determination: 8 April 2026

COSTS DETERMINATION OF THE AUTHORITY

[1] On 13 February 2026, the Authority issued a determination which found that LJB had been unjustifiably dismissed by EBD, and awarded her compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).¹

[2] LJB was also awarded interest on the wages which EBD had withheld from her final pay, together with penalties.

[3] The parties were encouraged to resolve any issues of costs between themselves, but have been unable to do so.

¹ *LJB v EBD* [2026] NZERA 78.

[4] EBD's General Manager RAC, advised that EBD has no intention of 'wasting time' making costs submissions.

[5] Having successfully established her personal grievance and other claims, LJB now seeks an award of costs.

Parties' names anonymised for this and in a related proceeding

[6] EBD brought a counterclaim against LJB.² Both proceedings involved the same parties. The Authority investigated both matters as separate and discrete proceedings. Separate substantive determinations were issued for each matter.

[7] In both matters, the Authority anonymised the parties' names by using a randomly generated string of three letters to refer to the parties and to one of the representatives. For the reasons set out in the Authority's substantive determination, the same approach is adopted in respect of this application for costs.

Costs principles

[8] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner.³ 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 are 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 increases costs unnecessarily can be taken into account in inflating or reducing an award;
- costs generally follow the event;
- awards of costs will generally be modest; and

² *EBD v LJB* [2026] NZERA 77.

³ *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808, and *Faggotti v Acme & Co Limited* [2015] NZEmpC 135.

- frequently, costs are judged against a notional daily tariff.⁴

Costs outcome

Starting point

[9] As LJB was the successful party in the substantive matter, she is entitled to a consideration of costs.

[10] The starting point for a consideration of costs is therefore \$4,500.00, being one full day of the Authority's notional daily tariff, before any upward or downward adjustment.

Attempts to resolve

[11] LJB made settlement offers on 3 April 2025, and 13 August 2025. Both offers were made on a *Calderbank* basis (that is, without prejudice save as to costs offers).

[12] LJB submits that EBD failed to engage in settlement discussions, and ignored both her *Calderbank* offers.

[13] LJB was awarded significantly more than either of her *Calderbank* offers by way of remedies under the Authority's substantive determination.

[14] As such, LJB invites the Authority to award an uplift to the daily tariff. LJB seeks an uplift of \$1875.00 in respect of her proceeding against EBD.⁵

Conduct

[15] Notwithstanding LJB's claim that her *Calderbank* offers were ignored, there is no evidence that the conduct of either party unreasonably increased the costs of the other party.

Adjustment to the tariff

[16] The daily tariff can be adjusted for relevant factors. Stepping back to look at matters overall, it is reasonable in the circumstances of this case that there is a modest

⁴ Employment Relations Authority "Practice Directions of the Employment Relations Authority Te Ratonga Ahumana Taimahi" www.era.govt.nz/assets/upload/practice-direction-of-era.
<https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>

⁵ LJB seeks a total uplift of \$3750.00, in respect of this proceeding, and the related proceeding brought by EBD. LJB invites the Authority to apportion the total uplift sought, equally between the two proceedings.

uplift in the costs awarded.

[17] I consider that an uplift to the daily tariff in the sum of \$500.00 is justified.

[18] The daily tariff of \$4,500.00, plus an uplift of \$500.00 totals \$5,000.00. From the copies of the invoices provided by LJB, I am satisfied that her actual representation costs far exceed this amount, and she is not seeking mediation costs.

[19] A costs award of \$5,000.00 reflects that LJB was the successful party, and acknowledges that her *Calderbank* offers were not accepted by EBD.

[20] Such an award is also consistent with the principle that costs awards will generally be modest.

[21] It is also appropriate that LJB is reimbursed for the cost of the fee she paid to lodge her application in the Authority.

Orders

[22] Within 28 days of the date of this determination, EBD is ordered to pay to LJB:

- (a) \$5,000.00 as a contribution towards her representation costs; and
- (b) \$71.55 for the Authority's lodgement fee.

Jeremy Lynch
Member of the Employment Relations Authority