

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 214
367843

BETWEEN EBD
 Applicant

AND LJB
 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 EBD had not provided sufficient information to support the orders it sought in its proceeding against LJB. The Authority declined to order any remedies against LJB.¹

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

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

¹ *EBD v LJB* [2026] NZERA 77

[4] Having successfully defended all EBD's claims against her, LJB now seeks an award of costs.

Parties' names anonymised for this and in a related proceeding

[5] LJB brought a separate personal grievance claim against EBD.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. Separate costs applications have been made for each matter.

[6] 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

[7] The Authority has 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.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
- frequently, costs are judged against a notional daily tariff.⁴

² *LJB v EBD* [2026] NZERA 78.

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

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>

Costs outcome

Starting point

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

[9] 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

[10] 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).

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

[12] LJB successfully defended all EBD's claims against her in the Authority. Had EBD accepted her settlement proposal, she would not have been put to the time and cost of defending the EBD's claims before the Authority.

[13] As such, LJB invites the Authority to award an uplift to the daily tariff. LJB seeks an uplift of \$1875.00 as she was the successful party in this proceeding.⁵

Conduct

[14] 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

[15] 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 uplift in the costs awarded.

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

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

[17] 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.

[18] 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.

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

Orders

[20] Within 28 days of the date of this determination, EBD is ordered to pay to LJB the sum of \$5,000.00 as a contribution towards her representation costs;

Jeremy Lynch
Member of the Employment Relations Authority