IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE

[2026] NZERA 217
3290821

	BETWEEN	RMD Applicant
	AND	LWQ Respondent
Member of Authority:	Claire English	
Representatives:	D Fleming, counsel for the Applicant A R Shaw and N T U Thrupp, counsel for the Respondent	
Submissions received:	22 December 2025 from Applicant 7 November and 14 January 2026 from Respondent	
Determination:	9 April 2026	

COSTS DETERMINATION OF THE AUTHORITY

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[1] On 28 August 2025, the Authority issued a determination in this matter, dismissing the applicant's claim of unjustifiable dismissal and claims under the Protected Disclosures Act (Protection of Whistleblowers) Act 2022, and awarding the sum of $265.50 gross in respect of holiday pay, which issue was not disputed by the respondent. The respondent also successfully sought non-publication orders, which I confirm for the avoidance of doubt, continue to apply to this costs determination.

[2] In the substantive determination, the parties were encouraged to resolve any issue of costs between them, and the Authority made reference to its usual practice of applying the daily tariff to determine costs, as well as referencing that the investigation meeting took place over three days.

[3] The parties have not been able to resolve costs between themselves, and have filed memoranda accordingly. Additional time was allowed for the resolution of a dispute about the admissibility of certain documents, and the matter of an award of costs now falls to be resolved.

The Respondent's Position

[4] The respondent seeks costs against the applicant. The respondent submits that the applicant's claims were brought for an improper purpose, that is, to punish the director of the respondent company, the applicant's sibling, in circumstances where I found there was a significant family breakdown and multiple concurrent proceedings in the Family Court involving the same persons.

[5] In addition, the respondent submits that an uplift in costs was warranted on the basis of significant claims made by the applicant in relation to the closure of their unrelated business, where they sought significant sums of money be paid to them by their sibling, the director of the respondent company. At the investigation meeting, I asked the applicant to explain how they believed that either the respondent company that was the employer, or the director of that company, was legally responsible for the winding up of the applicant's own company which was an entirely separate entity. The applicant advised me under affirmation that they felt this was the only way to get money from their sibling which they blamed for the failure of their business. The applicant then withdrew these claims on the second day of the investigation meeting. It is submitted that considerable time was spent by the respondent in preparing to defend these claims given the significant amount of money involved and that the applicant intended to call two witnesses, requiring wasted preparation.

[6] The respondent further submits that the applicant's claims in respect of the Protected Disclosures (Protection of Whistleblowers) Act 2022 which were not upheld were misused by the applicant in all the circumstances at the time.

[7] Finally, the respondent submits that it made reasonable offers to settle, which were unreasonably refused by the applicant. In particular, the respondent refers to an offer to settle for the sum of $20,000 made 7 months prior to the investigation meeting,

and another offer to settle for $20,000 made on 17 April 2025, some two months prior to the investigation meeting. The respondent compares this sum to the total amount of earnings by the applicant over the duration of their short employment with it, which totalled $3,300.

[8] For all these reasons, the respondent seeks full indemnity costs, amounting to some $81,500.96 (including a sum relating to the preparation of costs submissions).

The Applicant's Position

[9] The applicant says that the correct starting point is the Authority's usual tariff for a three-day investigation meeting, that costs should potentially be reduced due to the applicant's limited ability to pay, and that costs-on-costs should not be awarded. It is further submitted for the applicant that they reasonably declined offers to settle made by the respondent, as those offers did not allow for any "vindication".

Principals

[10] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is $4,500 for the first day of hearing, and $3,500 for subsequent hearing days[1].

[11] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[12] The investigation meeting in this matter was held over three days, and was held in person. The applicant attended together with her representative, and the respondent attended together with its representatives and witnesses.

[13] Costs follow the event. The applicant was unsuccessful in all of her claims, with the exception of an award of $265.50 in relation to holiday pay, which was not in fact in dispute between the parties. The respondent successfully defended all claims against it.

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[1] For further information about the factors considered in assessing costs, see: https://www.era.govt.nz/determinations/awarding-costs-remedies/

[14] Overall, I concluded that the respondent was the successful party. It is therefore entitled to a contribution to its costs.

[15] The correct starting point is the Authority's daily tariff for a three-day investigation meeting. At the rate of $4,500 for the first day, and $3,500 for two subsequent days, this therefore results in a total starting point of $11,500.00.

[16] I must then consider whether any uplift or reduction is required to this starting point.

[17] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*[2] as confirmed in *Fagotti v Acme and Co Limited*[3]. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful party's conduct.

[18] I will first consider the submission on behalf of the respondent that full indemnity costs are warranted. I find that this would not be appropriate. Costs are to be modest, and the general rule is that an award of costs is to be a contribution to those costs only. The applicant was entitled to test their dismissal, even if they were unsuccessful.

[19] I find that the tariff for a three-day investigation meeting remains the correct starting point.

[20] Having considered the matter in the round, I find that there are two aspects of this matter in particular which justify an uplift. The first is the applicant's bringing of claims against the respondent, and the director of the respondent, in relation to matters arising from the closure of the applicant's own company. These claims, such as they

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[2] [2005] 1 ERNZ 808.
[3] [2015] NZEmpC 135 at 114.

were, did not arise from the employment relationship between the applicant and respondent, and did not arise until after the ending of the employment relationship.

[21] Nevertheless, the applicant raised and vigorously pursued a significant amount of monetary damages based on these claims. This included calling witnesses in support. These claims were withdrawn on the second day of the investigation meeting. The respondent necessarily was put to the trouble, time, and expense of defending these claims. My view is that an additional allowance of one day, at the second day's tariff of $3,500, should be made to acknowledge this wasted effort.

[22] The second matter that I consider warrants an uplift relates to offers to settle made by the respondent in advance of the investigation meeting. The respondent made two such offers to the applicant as mentioned above. Both offers were for the payment of the sum of $20,000 to the applicant. This obviously compares favourably with the total amount awarded by the Authority of $265.50 in holiday pay. It is submitted for the respondent that the applicant's refusal of these offers was unreasonable and justifies an increase in costs awarded. It is submitted for the applicant that refusal was not unreasonable as the offer while monetarily beneficial, did not provide the applicant with any degree of vindication.

[23] I have considered this submission, and have weighed it in the circumstances of this claim. As I have found, this claim in the Authority arose from a background of a breakdown in family relationships, not just between the applicant and their sibling (the director of the respondent), but the applicant and another sibling, a former spouse, a parent, and disputes over custody, relationship property, and the applicant's contesting of their late father's estate. The applicant has raised multiple other claims against family members in other jurisdictions, in addition to claims in the Authority. I am reluctant to put much weight in the submission that the applicant was entitled to an aspect of "vindication" especially in light of their evidence at hearing that claims in the Authority were at least in part designed to obtain funds from their sibling directly.

[24] I also consider that the offer to settle for the sum of $20,000 must be weighed against the total amount earned by the applicant over her employment with the respondent, being $3,300. In all these circumstances, I find that the applicant's refusal

of this offer was on balance, unreasonable, and should result in an increased costs award.

[25] Generally speaking, uplifts awarded by the Authority in such circumstances are modest. I find that an uplift equivalent to half a day's tariff, at the rate for the second day's hearing (eg an additional $1,750), is appropriate and in line with similar awards.

[26] It is also submitted for the applicant that she has limited means to pay a costs award and this should result in a reduction of costs. I find that this submission does not sit comfortably with the way that the applicant has commenced multiple proceedings in the Authority and elsewhere against multiple family members, and has pursued a significant variety of claims with vigour. There are costs consequences to doing so, and the applicant has been advised at all points.

[27] Insofar as the means of the applicant need to be taken into account, I find that the use of the Authority's tariff framework has already done so. Costs in the Authority are already modest by design, and my view is that no further reduction need be made.

[28] Accordingly, I find that the appropriate costs award in favour of the respondent is the sum of $16,750.00. Orders are made accordingly.

Other Matters

[29] Finally, I turn to consider a submission on behalf of the respondent that the applicant's prior representative should be made personally liable for the payment of costs. This is on the grounds that the representative was responsible for multiple issues which arose in the matter, and therefore it was their involvement in the litigation which increased costs to the respondent when proper and dispassionate advocacy would not have.

[30] It is submitted for the applicant that there are no, or insufficient grounds to join the applicant's prior representative to the proceedings for costs purposes. It is submitted for the applicant that this would require "some extraordinary feature" where the representative had effectively taken on the litigation as their own, and that this case does not rise to that level.

[31] I have considered this matter carefully, and in doing so I acknowledge the unusual features of this matter and the genuine emotional toll on all parties. On balance, I decline to join the applicant's former representative as a party for costs purposes. I take the view that their advocacy did not significantly prolong the proceedings (and thereby cause additional costs) in clear excess of what might have been expected, and there is no clear evidence that they put forward arguments which were unauthorised by or against the instructions of RMD. In short, I find that the high threshold for such a joinder was not met.

[32] No additional orders are made.

Orders

[33] RMD is ordered to pay to LWQ within 28 days of the date of this determination the sum of $16,750.00 (inclusive) as a contribution to costs.

Claire English
Member of the Employment Relations Authority