

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 237
3355483

BETWEEN	SHINOY ABRAHAM Applicant
AND	CHIEF EXECUTIVE OF ORANGA TAMARIKI – MINISTRY FOR CHILDREN First Respondent
AND	SOCIAL WORKERS REGISTRATION BOARD Second Respondent

Member of Authority:	Peter Fuiava
Representatives:	Allan Halse, advocate for the Applicant Renee Butler & Isabella Cronin-Stone, counsel for the Second Respondent
Submissions and other information received:	14 April 2026 from the Applicant 25 June 2025 and 11 March 2026 from the Second Respondent
Determination:	21 April 2026

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination dated 27 February 2026, I granted an application by the Social Workers Registration Board (the Board) under s 221 of the Employment Relations Act 2000 (the Act) for it to be removed as a respondent in this proceeding.¹

[2] The question of costs was reserved and while the parties were encouraged to resolve this matter between themselves,² they have not been able to do so. This costs determination resolves this issue.

¹ *Abraham v Chief Executive of Oranga Tamariki* [2026] NZERA 113 at [22].

² Above at [23].

What do the parties say about costs?

[3] The Board says that it has incurred costs of approximately \$10,000 (not including GST or disbursements) in defending itself against Mr Abraham's claims and that an appropriate starting point is one half of the notional tariff which amounts to \$2,250. However, an uplift to \$4,500 is sought by the Board because Mr Abraham was given the opportunity to withdraw his claim at an earlier case management conference but chose to have his matter dealt with by the Authority as a preliminary matter instead. It was further said that Mr Abraham was aware that the Social Workers Registration Act 2003 provided him with a right of appeal to the District Court but instead of exercising that right, made a claim against the Board in the Authority in an apparent attempt to make the matter public.

[4] In reply, it was submitted that the fact that Mr Abraham did not agree to remove the Board as a second respondent reflects the existence of a genuine and arguable jurisdictional issue and not unreasonable conduct, and while it was ultimately found that the Board should be removed as a party, this did not render Mr Abraham's position unarguable. In any case, the Board's starting point for costs is misplaced as the notional tariff is directed to substantive investigation meetings and must be applied flexibly having regard to the nature and scale of the proceeding. Here, the proceeding did not involve an investigation into the substantive merits, there was no hearing of the evidence from witnesses or cross-examination, only the filing of written submissions followed by oral submissions by AVL.

What costs principles apply?

[5] The Authority has the power under sch 2 cl 15 of the Act to award costs. However, the discretion to order a party to pay costs to another must be exercised on a principled basis. Those principles are well settled and are outlined in the Authority's Practice Note,³ and Practice Direction,⁴ both of which are publicly available online.

[6] Informing the Authority's approach to costs is the leading decision of *PBO v Da Cruz* in which the Employment Court established key principles for the Authority

³ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

⁴ www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf.

to consider when determining costs. Relevantly for this determination, those key principles comprise:⁵

- There is a discretion as to whether costs are awarded and in what amount.
- The discretion is to be exercised in accordance with principle and not arbitrarily.
- 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 of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- That costs generally follow the event.
- That awards will be modest.
- That frequently costs are judged against a notional daily rate.
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

The Board is entitled to costs

[7] The Board was successful in its application to be removed as a respondent in this employment relationship problem and costs generally follow the event which means that the unsuccessful party, Mr Abraham, will be required to make a contribution towards the costs of the successful party, the Board. Although Mr Halse invites me to let costs lie where they fall because of the jurisdictional issue before the Authority, the issue was neither novel nor complex and is not one that falls into any of the categories noted in the Authority's Practice Direction where the parties could expect to bear their own costs.⁶

[8] Be that as it may, I agree with Mr Halse that the quantum of the Board's costs claim is excessive and comes close to being punitive in nature. Ensuring that costs remain modest in the Authority goes a long way to lessen the chilling effect that a

⁵ *PBO Ltd (formerly Rush Security Ltd v Da Cruz* [2005] 1 ERNZ 808 at [44].

⁶ Practice Direction, n 4, at pg 5, paragraph 6(i) to (ix).

significant costs award might have on employees pursuing legitimate grievances in what is, a first instance forum.

[9] My investigation into the preliminary issue involved the filing of written submissions and a short submissions hearing by AVL. I consider that one-half of the notional tariff for a one-day investigation meeting or \$2,250 is appropriate in all the circumstances.

Costs order

[10] For the reasons given above, the Authority orders Shinoy Abraham to pay the Social Workers Registration Board costs of \$2,250 as a contribution towards its actual and reasonable costs within 28 days from the date of this determination.

Peter Fuiava
Member of the Employment Relations Authority