

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 243  
3326520

BETWEEN ANTHONY LUGO-SHARPE  
Applicant  
AND KAH NEW ZEALAND  
LIMITED  
Respondent

Member of Authority: Robin Arthur  
Representatives: Allan Halse, advocate for the Applicant  
Beverley Edwards, counsel for the Respondent  
Submissions: From the Respondent on 23 and 25 March 2026 and  
from the Applicant on 13 and 20 April 2026  
Determination: 23 April 2026

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] By determination issued on 27 February 2026 the Authority found Anthony Lugo-Sharpe had not raised personal grievances he wished to pursue against KAH New Zealand Limited (KAH) within the required timeframe and there were no exceptional circumstances which would have warranted granting him leave to do so outside those time limits.<sup>1</sup> As a result the Authority did not have jurisdiction to investigate and determine concerns he had about his employment with KAH and how it came to end.

[2] The determination reserved any issue of costs, encouraging the parties to resolve that matter themselves. If they were unable to do so, the determination set a timetable for memoranda on costs. It also advised that, if asked to do so, the Authority could be expected to determine costs on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.

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<sup>1</sup> *Lugo-Sharpe v KAH New Zealand Limited* [2026] NZERA 114.

[3] In this case, where the investigation meeting started later than scheduled and ended by mid-afternoon, the tariff would likely be treated as applying to a half-day only. Half the tariff for a one-day meeting is \$2,250.

[4] The parties did not resolve costs and KAH applied for an order of costs.

[5] Mr Lugo-Sharpe has lodged a challenge to the Authority's preliminary determination on jurisdiction. He asked for a 'stay' on determination of costs pending the Employment Court's decision on his challenge.

[6] After submissions from both parties were considered his request for a stay was declined by Directions of the Authority issued on 25 March 2026. As noted in those Directions the Authority's usual practice is to proceed to determine costs where this is a challenge to its determination of a preliminary or substantive matter. This means all aspects of the case, both the substance of the challenged determination and costs in relation to the Authority determination, may be considered by the court as part of its hearing of the challenge. Otherwise, one or other party could potentially need to return to the Authority for a costs order in relation to the earlier determination.

[7] KAH asked for an order of costs of \$2,250, that is at the tariff rate for a half-day investigation meeting, the amount indicated earlier as likely to be awarded. The company said it had "total success" in opposing Mr Lugo-Sharpe's claims that he had raised personal grievances in time or should be allowed to pursue them anyway due to exceptional circumstances.

[8] KAH also asked for \$337 to be added to the tariff amount for GST and for an order of a further \$500 as costs. It said this further \$500 was for costs incurred in responding to Mr Lugo-Sharpe's request for a stay of costs and because it said he had not made "any offer of contribution" on costs.

[9] The Authority's 25 March Directions provided an opportunity for Mr Lugo-Sharpe to lodge a memorandum specifically on the issue of costs. His advocate subsequently lodged a further submission on 13 April about whether a stay on costs should be made. As that issue had already been resolved by the 25 March Directions he was given a further opportunity to lodge a memorandum solely on the issue of costs by 20 April. He did so.

## **Factors**

[10] In determining costs the Authority applies well-established tenets to the particular circumstances of the case.<sup>2</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.

[11] 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.

## **Assessment**

[12] KAH successfully opposed Mr Lugo-Sharpe’s claims he had raised his grievance in time or, if not, that exceptional circumstances should allow to him to pursue this grievance anyway. An award of costs ‘follows the event’ of its success.

[13] Mr Lugo-Sharpe’s submissions accepted that the assessment of costs should be “by reference to a half-day tariff only”. An award of costs at the tariff rate for a meeting that took just under half a day accords with the principle that the costs award should be for a relatively modest amount.

[14] An additional amount to separately account for GST is not to be added to that inclusive tariff amount.

[15] There were no grounds established for the tariff amount to be adjusted, upwards or downwards, in relation to any unreasonable conduct by one or other party that unnecessarily increased costs or in relation to Mr Lugo-Sharpe’s ability to pay the limited level of costs to be awarded at the tariff rate.

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<sup>2</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).

[16] A further amount of \$250 is, however, to be added as a contribution to the separate and additional costs of representation incurred by KAH in responding to Mr Lugo-Sharpe's application for the Authority to stay its determination of costs.

[17] Mr Lugo-Sharpe submitted, correctly, that he had a statutory right to seek a stay. Having unsuccessfully exercised that right, however, he was then liable to contribute to costs incurred by KAH in responding to that request.

**Order**

[18] Within 28 days of the date of this determination Mr Lugo-Sharpe must pay KAH the sum of \$2,500 as a contribution to its costs of representation incurred in this matter.

Robin Arthur  
Member of the Employment Relations Authority