

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2026] NZERA 248  
3370023

BETWEEN	JACK WILLS Applicant
AND	COMPLEX FORME LIMITED First Respondent

Member of Authority:	Alyn Higgins
Representatives:	Dave Cain, advocate for the Applicant None for the Respondent
Submissions received:	13 March 2026 from the Applicant None from the Respondent
Determination:	24 April 2026

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 13 February 2026<sup>1</sup>, the Authority issued a determination finding the applicant, Mr Jack Wills had been unjustifiably dismissed from his employment as a result of the actions of Complex Forme Limited (CFL). Mr Wills was also found to have been unjustifiably disadvantaged through non-payment of wages due for work completed

[2] In that determination, the parties were encouraged to resolve costs between them, and the Authority made reference to its usual practice of applying the daily tariff to determine costs.

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<sup>1</sup> *Wills v Complex Forme Limited* [2026] NZERA 76

[3] The parties have not been able to resolve costs between themselves and the applicant has filed submissions as to costs for the Authority to determine.

### **The Parties' Submissions**

[4] In submissions Mr Wills' representative cites the well-established approach adopted by the Authority in respect of costs awards as set out by the Employment Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz*<sup>2</sup> as confirmed in *Fagotti v Acme and Co Limited*.<sup>3</sup>

[5] Mr Wills seeks a small uplift in a costs award to \$2,500 along with the \$71.55 Authority filing fee as fair and reasonable in the circumstances. In support of this uplift Mr Wills says that the respondent has avoided being actively involved in the Authority's process and this has materialistically increased the applicant's costs.

[6] The respondents did not file any costs submissions.

### **Legal principles**

[7] The power of the Authority to award costs is set out in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). The principles and approach adopted by the Authority in exercising this power are set out in the Authority's Practice Direction and the legal principles which underpin it.<sup>4</sup> These principles are:

- (a) An award of costs is discretionary.
- (b) Costs will generally follow the event.
- (c) The starting point for assessing costs is the notional daily tariff.
- (d) The Authority then considers whether there are any relevant factors which might lead to increasing or decreasing the daily tariff. Factors include:<sup>5</sup>
  - (i) costs awards in the Authority will be modest;
  - (ii) it is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable;

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<sup>2</sup> *PBO Limited v Da Cruz* [2005] 1 ERNZ 808

<sup>3</sup> *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135 at [114]

<sup>4</sup> available at [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)

<sup>5</sup> *JCE v The Chief Executive of the Department of Corrections* [2018] NZERA 175 at [4]

- (iii) costs are not to be used as a punishment or an expression of disapproval of a party's conduct although conduct which increases costs unnecessarily can be considered in increasing the daily tariff;  
and
- (iv) the complexity of a matter may justify an increase in the daily tariff.

## **Application**

### *Notional daily tariff*

[8] The investigation meeting took place in Napier and took a half of a day. The starting point for assessing costs based on the daily tariff is therefore \$2,250.

### *Adjusting the tariff*

[9] I do not consider that there is any reason to adjust the daily tariff rate in this case. Mr Wills says that the respondent has avoided being actively involved in the Authority's process and this has materialistically increased the applicant's costs but does not really provide any supporting grounds.

[10] While the respondent did not actively participate in the Authority process the applicant has not made out its case as to why there should be an uplift in costs.

[11] The Authority has its approach to costs, which is focused on access to justice and modest costs awards. The daily tariff has been put in place to give parties some certainty of what the costs consequences of pursuing a claim, or losing a claim, are likely to be.<sup>6</sup>

## **Outcome**

[12] Within 28 days of the date of this determination, Complex Forme Limited is ordered to pay Jack Wills the sum of \$2,250 as a contribution towards costs incurred. Mr Wills is also entitled to be reimbursed the Authority's filing fee (\$71.55).

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<sup>6</sup> See for example *Key Industries v Perrin* [2023] NZERA 172 at [114].

[13] Orders are made accordingly.

Alyn Higgins  
Member of the Employment Relations Authority