

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2026] NZERA 266  
3350240

BETWEEN THOMAS PATRICK KENNA  
Applicant

AND ANZTEC LIMITED  
Respondent

Member of Authority: David G Beck

Representatives: Lawrence Anderson, advocate for the Applicant  
Linda Mathieson, advocate for the Respondent

Investigation Meeting: On the papers

Submissions Received: 24 March 2026 from the Applicant  
7 April 2026 from the Respondent

Date of Determination: 1 May 2026

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Following an investigation meeting held on 17 February 2026, the Authority in a Determination of 2 March 2026, held that Thomas Patrick Kenna was unjustifiably disadvantaged by his then employer Anztec Limited (Anztec), during a restructuring process that disestablished Mr Kenna's job. Anztec was ordered to pay Mr Kenna \$15,000 compensation pursuant to section 123 (1)(c)(i) of the Employment Relations Act 2000 (the Act).<sup>1</sup> Costs were reserved for submissions should the parties be unable to agree.

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<sup>1</sup> *Thomas Patrick Kenna v Anztec Limited* [2026] NZERA 120.

## **The application for costs and response.**

[2] In a memorandum of 24 March 2026, Mr Anderson sought costs by reference to the Authority's notional daily rate for a one-day investigation meeting and reimbursement of the Authority filing fee.

[3] Ms Mathieson's opposing submission of 7 April on behalf of Anztec contended that as Mr Kenna had failed to establish that the redundancy was not genuine, costs should lie where they fall as this was a case of 'mixed success'.

## **Assessment**

### *The Authority's costs approach*

[4] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000.

[5] To assess costs where one party, as is here, has only mixed success can be problematic as it is arguable that Mr Kenna's 'success' was partial as he failed to establish that he had been unjustifiably dismissed. However, Judge Smith in *William Coomer v JA McCallum and Son Limited* noted (omitting citations):

Where both parties have had a measure of success determining which of them is entitled to costs is often a nuanced assessment of competing considerations. In *Weaver*, the Court said that the appellants were the only party to have succeeded by any 'realistic appraisal'. That conclusion followed because they obtained a monetary award ..... It was immaterial that they had not succeeded to the full extent of their claim because' ... success on more limited terms is still success.<sup>2</sup>

### *Costs for Mr Kenna*

[6] A starting point is that costs normally follow the event and as Mr Kenna was successful in his personal grievance (albeit not wholly successful) and obtained a significant compensatory remedy. An award of costs in Mr Kenna's favour is appropriate.

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<sup>2</sup> *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC at [37] – [43].

### *Applying the daily rate*

[7] The Authority's approach is to apply a notional daily rate and only adjust that rate if persuaded that circumstances or other factors require an upward or downward adjustment.<sup>3</sup> The current daily rate is \$4,500 for the first full day of an investigation meeting.

### *Adjusting the daily rate*

[8] Given the investigation meeting took slightly less than a day (concluding at 3 pm), I would normally consider applying a proportion of the daily rate but I accept a small upward adjustment is warranted to account for preparation time and submissions.

[9] I consider it equitable to award Mr Kenna costs in the amount of the full daily rate of \$4,500 to take account of the time for submissions and to reimburse him the Authority filing fee.

### **Order**

[10] Anztec Limited is to pay Thomas Patrick Kenna a contribution to legal costs in the amount of \$4,500 net and to reimburse Mr Kenna the Authority filing fee of \$71.55, within 28 days of this determination being issued.

David G Beck  
Member of the Employment Relations Authority

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<sup>3</sup> For further information about the factors considered in assessing costs see: [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)