IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2026] NZERA 274
3374083

	BETWEEN	ROBERT TUNNICLIFFE Applicant
	AND	SOLLY'S FREIGHT (1978) LIMITED Respondent

Member of Authority:	William Fussey
Representatives:	Paul Mathews, advocate for the applicant Nick Mason, counsel for the respondent
Investigation Meeting:	On the papers
Submissions received:	11 March 2026 from the applicant 23 March 2026 from the respondent
Date of Determination:	4 May 2026

COSTS DETERMINATION OF THE AUTHORITY

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[1] In a determination dated 20 February 2026, I resolved the parties' employment relationship problem in favour of the applicant, Robert Tunnicliffe.[1] I determined that Solly's Freight (1978) Limited (Solly's) unjustifiably dismissed Mr Tunnicliffe and, having taken Mr Tunnicliffe's contribution into account, I ordered Solly's to pay Mr Tunnicliffe $5,000 for loss of dignity and injury to feelings pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).

[2] In my determination I reserved costs so that the parties could try to agree costs. The parties have been unable to agree costs and now both Mr Tunnicliffe and Solly's seek orders for costs.

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[1] *Tunnicliffe v Solly's Freight (1978) Limited* [2026] NZERA 91.

[3] Mr Tunnicliffe seeks an award of costs which is moderately less than $9,125, applying the daily tariff as follows:[2]

(a) $4,500 for a one-day Investigation Meeting.

(b) $1,125 for the equivalent of a further quarter day Investigation Meeting to account for the preparation of written submissions following the Investigation Meeting.

(c) An uplift of $3,500 due to Solly's conduct unnecessarily increasing Mr Tunnicliffe's costs. Mr Tunnicliffe's submission is that Solly's relied on fabricated documents to defend the claim which unnecessarily increased Mr Tunnicliffe's costs.

(d) A downward adjustment in the tariff as a result of Solly's making a reasonable "Calderbank offer" of $8,000 pursuant to section 123(1)(c)(i) of the Act and a contribution to costs of $3,000 plus GST.[3] Mr Tunnicliffe submits the adjustment should be moderate because the email, which was sent on 8 December 2025 four days prior to the Investigation Meeting, only provided that the offer was open for acceptance until 4pm the following day.

(e) $71.55 for the application fee

[4] Solly's also seeks an award of costs, submitting that an amount equivalent to one and a half days of the daily tariff, i.e. $6,250, is appropriate. Its view is that it made a Calderbank offer which Mr Tunnicliffe unreasonably rejected, which was more favourable to Mr Tunnicliffe than the Authority's determination, and which unnecessarily put Solly's to the expense of defending Mr Tunnicliffe's claim. Its basis for one and a half days was that the Investigation Meeting lasted a day, and subsequent written submissions amounted to the equivalent of a half-day Investigation Meeting.

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[2] The normal practice of the Authority when setting costs is to apply a set amount for each day of the Investigation Meeting; this is applying the daily tariff. The current daily tariff is $4,500 for the first day of an investigation meeting and $3,500 for every subsequent day.

[3] A Calderbank offer is an offer made by one party to settle the claim. The offer is marked "without prejudice save as to costs". The purpose of a Calderbank offer is not only to attempt to settle a claim but also to reserve the right to bring the offer to the Authority's or the Court's attention if the claim is not settled. This is so that the offer can be used for assessing costs once the claim has been determined.

Analysis

Costs in the Authority

[5] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Act. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.[4]

Costs follow the event

[6] The presumption with costs is that costs should follow the event so that a successful party is awarded costs from the other party. In this case Mr Tunnicliffe was successful, and so the starting point is that he is entitled to an award of costs. This remains the case even though his remedy was reduced for contribution.

Applying the daily tariff

[7] There is no reason to depart from the normal daily tariff approach to assessing costs in the Authority; so, I will calculate the award of costs based on the daily tariff.

[8] The Investigation Meeting took two thirds of a day. I accept that the evolution of the evidence meant that further work was required in parties providing written submissions following the Investigation Meeting. As such, I will adopt a starting point of one day, i.e. $4,500.

Adjusting the daily tariff

[9] The question that follows then is whether I should adjust the daily tariff by:

(a) Increasing for additional work required due to Solly's conduct in defending Mr Tunnicliffe's claim.

(b) Reducing for Solly's Calderbank offer to Mr Tunnicliffe that was not accepted.

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

Should the daily tariff be increased for additional work?

[10] There was nothing remarkable about Solly's conduct in defending Mr Tunnicliffe's claim. It relied on information supplied to it by one of its employees and it was entitled to do so. Furthermore, counsel for Solly's conducted the company's defence efficiently and without unnecessarily increasing Mr Tunnicliffe's costs.

[11] If Mr Tunnicliffe's point was to rely on the ground that Solly's defence had no prospect of success given his position that the documents relied on were fabricated and my findings that no disciplinary process was followed and no disciplinary letters issued, then that is not accepted.

[12] The Authority may increase the costs awarded against an unsuccessful party if the unsuccessful party caused extra costs by advancing arguments that had no prospect of success. I find, however, that Solly's did not use arguments that had no prospect of success.

[13] Although I held that no disciplinary process was followed and no disciplinary letters were issued, Solly's raised arguments I genuinely had to consider before I reached that conclusion. They were not arguments that could be dismissed without due consideration, and ultimately, I was only able to reach my conclusions having undertaken an investigation.

[14] The threshold for determining that a party used arguments which had no prospect of success is a high one. In general, it will require a party to have advanced a legally untenable position in defiance of settled law or express statutory provisions. This has not happened here.

Should the daily tariff be reduced due to a Calderbank offer?

[15] Another accepted basis for adjusting the daily tariff is where the remedy a party receives is lower than they would have received from a Calderbank offer they previously rejected.[5]

[16] Solly's Calderbank offer was $8,000 pursuant to section 123(1)(c)(i) of the Act and $3,000 plus GST contribution to costs. Had Mr Tunnicliffe accepted this offer he would have

[5] The basic premise is that if a successful applicant rejected a Calderbank offer from the respondent that was greater in quantum than the remedies awarded by the Authority, then the applicant should be awarded a reduced amount of costs. The rationale is that in this scenario it is unnecessary for an applicant to continue with their claim because the applicant would have gained more from accepting the offer and would have avoided the ongoing costs for both parties.

been better off than he is from the remedy I issued in my determination, and neither party would have incurred additional costs.

[17] It is significant that the Calderbank offer of an $8,000 payment pursuant to section 123(1)(c)(i) is $3,000 greater than the remedy Mr Tunnicliffe was awarded, and the Calderbank offer also included a contribution to costs. When taking both the offer of compensation and the offer of costs into account, the Calderbank offer was more than twice the remedy awarded by the Authority.

[18] The Calderbank offer was made four days in advance of the Investigation Meeting and was open for acceptance for a little under 30 hours. Mr Tunnicliffe did not file any evidence of having not had sufficient time to consider the offer and the matter having been set down for a one-day Investigation Meeting on a relatively isolated issue, it was not a case that necessitated additional time for considering the offer.

[19] In the circumstances, I do not consider the timeframe to have been unreasonable.[6] It is common for parties, in advance of imminent litigation, to make Calderbank offers with relatively tight timeframes. For the most part, this is not unreasonable given the need for certainty, allowing parties and their representatives to ascertain whether (further) preparation for the Investigation Meeting is necessary.

[20] Moreover, counsel for Solly's followed up two days after the offer had expired to clarify whether the offer had been rejected. This suggests Solly's was open to the offer being accepted after the expiry date. Mr Tunnicliffe's representative replied at that point simply stating that "the offer is rejected".

[21] In summary, Mr Tunnicliffe rejected a Calderbank offer that was considerably higher than the remedy he was issued by the Authority. He had sufficient opportunity to genuinely consider that offer, and it was his choice to reject it.

[22] I therefore find that the starting point of $4,500 is reduced to zero. The Act emphasises the importance of resolution without judicial intervention, and I would need a good reason to

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[6] In *Sealord Group Ltd v Pickering* [2015] NZEmpC 158 the Employment Court considered a Calderbank Offer that was also made four working days prior to the hearing to not have been made within reasonable time. However, the circumstances of this case were different. Not only does Employment Court regulation 68(1) of the Employment Court Regulations 2000 explicitly require the offer to have been made a reasonable time before the hearing (a regulation that is not replicated in the Employment Relations Authority Regulations 2000), but the defendant had provided an affidavit regarding his having been hunting in the bush with limited telephone and internet connectivity in advance of a six-day substantive hearing.

depart from that objective by issuing a costs award to an applicant who could have resolved the claim by accepting an offer to settle for a higher amount at an earlier juncture.[7]

Conclusion

[23] I conclude that costs are to lie where they fall. I make no award of costs to either party.

William Fussey
Member of the Employment Relations Authority

[7] See for example the objects of the Act, which include, per sections 3(a)(v) and 3(a)(vi), promoting mediation as the primary problem-solving mechanism and reducing the need for judicial intervention, both of which are underpinned by the statutory regime for records of settlement as set out at section 149.