

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 298  
3362303

BETWEEN ADAM GIFFORD  
Applicant

AND UMA BROADCASTING  
LIMITED  
Respondent

Member of Authority: Helen van Druten

Representatives: Tim Oldfield, counsel for the Applicant  
Kathryn McKinney and Darius Shahtahmasebi, counsel  
for the Respondent

Submissions received: 20 March 2026 from the Applicant  
31 March 2026 from the Respondent

Determination: 14 May 2026

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] On 23 February 2026 the Authority issued a determination resolving issues between Adam Gifford and UMA Broadcasting Ltd (UMA).<sup>1</sup> The Authority found that Mr Gifford was unjustifiably dismissed from his employment by way of redundancy. UMA was ordered to pay Mr Gifford compensation and lost wages pursuant to s 123 of the Employment Relations Act 2000 (the Act) along with Kiwisaver and interest on lost wages. A penalty for breach of the Wages Protection Act 1983 (WPA) was also ordered.

[2] Costs were reserved for the parties to negotiate but no agreement was reached.

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<sup>1</sup> *Gifford v UMA Broadcasting Ltd* [2026] NZERA 96.

[3] Submissions were received on behalf of Mr Gifford seeking an award of costs. UMA then provided costs submissions.

### **Mr Gifford's application for costs**

[4] In a memorandum of 20 March 2026, Mr Gifford's counsel seeks costs of \$8,000 and the Authority filing fee as per the Authority's normal daily tariff approach. Both the memorandum and an invoice from counsel confirm that Mr Gifford's costs exceed the costs amount sought.

[5] Mr Gifford was successful in his central claim of unjustified dismissal. He also established a breach of the Wages Protection Act 1983 (WPA) warranting a penalty.

[6] At commencement of the investigation meeting, Mr Gifford's employment status for a specific period of his employment remained an issue to be determined. This claim was withdrawn by counsel immediately after lunch on the first day. Mr Gifford submits that this should not result in a reduction of costs payable to him because UMA accepted it was a breach of the WPA and UMA did not lead evidence about that claim. He draws the Authority's attention to various actions by UMA, submitting that these balance out the late withdrawal of that claim.

[7] The costs application by Mr Gifford submits that the first without prejudice offer should be disregarded with the latter two given no weight because they were made immediately prior to the investigation meeting after all the preparation was complete and because they were not left open for sufficient time to be effective.

[8] Lastly, Mr Gifford's application referred to his success establishing a penalty for breach of the WPA and that this impacts on whether the rejection of an offer without prejudice save as to costs is reasonable.

### **UMA's application for costs**

[9] UMA submits that the Authority should let costs lie where they fall, this being within the Authority's discretion.

[10] It considers that Mr Gifford declined a koha offered over a year prior to the investigation meeting. When legal costs are factored in, Mr Gifford would have been

financially better off had he accepted that koha at the time. It also included non-financial considerations that Mr Gifford earlier indicated were important to him.

[11] UMA considered the three offers made were sufficiently similar in content that the short timeframe was reasonable and made after briefs of evidence were exchanged so Mr Gifford could consider them with all relevant information.

[12] UMA further submits that the penalty for breach of the WPA was not raised as a reason for rejecting the earlier offers and demonstrates it was not a factor in his rejection of the earlier offers.

## **Assessment**

### *The Authority's costs approach*

[13] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. This power is discretionary but must be used in a principled manner.<sup>2</sup>

[14] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.

[15] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[16] The investigation meeting in this matter was held over two full days in person. The starting point therefore is the daily tariff for a 2-day investigation meeting, being the sum of \$8,000.00.

[17] In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* principles guiding the Authority's approach to costs are outlined including:

- a. The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction;
- b. Equity and good conscience is to be considered on a case by case basis;

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<sup>2</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)

- c. Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award;
- d. Costs generally follow the event;
- e. Awards will be modest
- f. Frequently costs are based on a notional daily tariff.<sup>3</sup>

### *Calderbank offers*

[18] Costs normally follow the event, and as Mr Gifford was successful with his grievance and received a compensatory remedy he should be entitled to costs.

[19] One exception to this principle is where there has been a Calderbank offer that has been unreasonably rejected by an applicant. The rationale is that the relevant party could have accepted the offer and would have avoided the ongoing costs for both parties by ending its claims at that time. If the successful applicant has rejected a Calderbank offer to settle from the respondent and has then not been awarded an amount in the subsequent determination that betters the offer then the successful applicant should not be awarded costs.<sup>4</sup>

[20] The key requirements in applying this exception are that the Calderbank offer is a valid Calderbank offer, it was unreasonably rejected by the other side, and that the party did not get an award from the Authority that was greater than the amount of the Calderbank offer.

[21] The koha offer of 21 October 2024 was an open offer, not made on a without prejudice basis and, in part, it attempted to address the non-financial concerns raised by Mr Gifford.

[22] The Calderbank offers in this case were threefold and all were valid Calderbank offers. The first Calderbank offer was rejected without explanation so I cannot conclude that its rejection was reasonable.

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<sup>3</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

<sup>4</sup> *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

[23] The second and third Calderbank offers were very similar. Put forward by UMA to Mr Gifford on 24 and 25 November 2025, they were also valid Calderbank offers. The offer of 24 November 2025 contained a substantial contribution towards legal costs above what the Authority would award within its notional tariff approach to costs. The 25 November 2025 offer did not specify the proportion of legal costs. Both offers were above the amount awarded by the Authority in its substantive determination.

[24] With two of three Calderbank exception requirements met, it then remains to determine whether the offers made by UMA were unreasonably rejected by Mr Gifford.

[25] The last two offers were made within four days of the investigation meeting, so after most preparation costs were incurred and with little time for consideration. However, the question is not only about time to consider, but also how adequately the offer was able to be considered. The only material difference between the two offers was an increase of \$5,000 in the latter offer and the proportion of the total sum as legal costs. In the circumstances and in an environment of negotiation where previous offers and a counteroffer were made, that offer in that time frame was not unreasonable. Mr Gifford had only to turn his mind to an increased financial amount offered and contrast this with his own without prejudice counteroffer, also on 25 November 2026.

[26] Financially, Mr Gifford would have been better to accept either of the last two offers. Based on correspondence, Mr Gifford did not wish to accept the non-financial constraints in each offer. That reluctance is understandable in the circumstances, though perhaps unreasonable to expect that UMA would make a financial settlement offer without wanting to add terms to minimise public exposure and require confidentiality. Mr Gifford made a personal decision that the non-financial factors were sufficiently important to decline the offers.

[27] A further factor considered is the Court of Appeal noting that the public interest in the fair and expeditious resolution of disputes would be adversely affected if parties were permitted to ignore without prejudice offers without costs being impacted.<sup>5</sup>

[28] I consider that the Calderbank offers should be accorded weight balancing the various considerations in determining the level of a costs award.<sup>6</sup> Equally this is

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<sup>5</sup> *Bluestar Print Group (NZ) Ltd v Mitchell* [2010] NZCA 385.

<sup>6</sup> *Weston v MCNZ Group Ltd* [2025] NZERA 799.

moderated by the timing of the offers by UMA when both parties would have incurred costs.

#### *Adjusting the daily rate*

[29] The investigation meeting took two days and both parties contributed fully in that investigation. However, both parties submit (and I agree), that the other party contributed in some way to additional time and cost in this matter – UMA prior to the investigation meeting and Mr Gifford's late withdrawal of his employment status claim at the investigation meeting after the matter was explored.

#### **Conclusion**

[30] Taking the \$8,000 notional tariff as a starting point and considering the Calderbank offer, the timing of the offers and other relevant factors, I make a reduction for the rejection of two valid Calderbank offers. Mr Gifford is entitled to receive a contribution of \$4,400 towards his costs and reimbursement of the Authority's filing fee.

#### **Orders**

[31] UMA is ordered to pay Adam Gifford within 21 days of the date of this determination:

- a. \$4,400 as a contribution to his costs; and
- b. \$71.55 for the Authority's filing fee.

Helen van Druten  
Member of the Employment Relations Authority