IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 322
3357184

	BETWEEN	VOLHA DANILIUK Applicant
	AND	FOR THE BOYS LIMITED First Respondent
	AND	BIG BLACK SACKS NEW ZEALAND LIMITED Second Respondent
Member of Authority:	Helen van Druten	
Representatives:	Aliaksandra Andreyuk, Advocate for the Applicant Jeremy Ansell and Nicole Meech, Counsel for the First Respondent No appearance for the Second Respondent	
Costs Submissions:	Up to 19 May 2026 from the Applicant 18 May 2026 from the Respondent	
Determination:	26 May 2026	

COSTS DETERMINATION OF THE AUTHORITY

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[1] In a determination of 1 April 2026, For The Boys Limited (FTB) was ordered to pay a penalty of $2,000 for breach of s 4 of the Wages Protection Act 1983 (WPA) and the parties' employment agreement. Given the timing of the error and nature of the breach, the Authority ordered the full amount of the penalty be paid to Ms Daniliuk. No order was made against Big Black Sacks New Zealand Limited (BBS).

[2] Ms Daniliuk's unjustified dismissal and unjustified disadvantage personal grievance claims were both unsuccessful.[1] Her claim for a breach of good faith was also unsuccessful.

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[1] *Daniliuk v For The Boys Ltd & Anor* [2026] NZERA 198 and *Daniliuk v For The Boys Ltd* [2025] NZERA 763.

[3] In the preliminary determination costs were reserved until determination of the substantive matter or until the matter was no longer before the Authority. In the substantive determination, costs were also reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately, they have been unable to do so.

[4] This determination resolves all issues of costs between the parties before the Authority.

Costs application and submissions

[5] On 13 May 2026, Ms Daniliuk filed a memorandum on costs, requesting that costs be stayed pending the determination of her challenge to the Employment Court or determination of her stay application filed to the Court. A copy of the stay application was sent to the Authority (and referenced in Ms Daniliuk's memorandum) providing further information in support of her costs submissions.

Ms Daniliuk's submissions

[6] Ms Daniliuk submits that costs should lie where they fall and there is good reason to depart from the usual notional tariff approach, including that determining costs risks unnecessary duplication and prejudice to the applicant while the challenge to the Court is pending.

[7] She further submits that:

(a) FTB did not achieve unqualified success as it received a penalty for withholding her final pay and that issue unnecessarily increased the costs of the investigation;

(b) FTB's shifting and inconsistent positions on employment status and pay created complexity and uncertainty; and

(c) Any award of costs would cause financial hardship.

[8] Ms Daniliuk further says that BBS failed to engage meaningfully for extended periods and its own conduct weights against any costs award.

[9] Ms Daniliuk also provided information on her personal financial circumstances and FTB were copied into that communication.

[10] She highlighted the Authority's obligation to consider the notional daily tariff and to consider factors that may justify an uplift or reduction in any costs award.

FTB's submissions

[11] FTB seeks costs of the notional daily tariff of $4,500 for the one-day investigation meeting plus an uplift of $2,000 for preparation of costs submissions and a further uplift of $5,000 for Ms Daniliuk's non-acceptance of a reasonable Calderbank offer.

[12] It says that the uplift is appropriate because:

(a) a Calderbank offer was made to Ms Daniliuk on 18 December 2024, a year before the matter was heard in the Authority. This offer (being over $40,000 in total payments), was far greater than the penalty awarded to Ms Daniliuk, was unreasonably rejected by her and resulted in significant costs for FTB having to defend the claim in the Authority; and

(b) Ms Daniliuk has refused to agree to contribute to costs at the daily tariff rate resulting in further costs to FTB preparing costs submissions.

[13] A copy of FTB's legal costs provided to the Authority show that costs incurred by FTB exceed the amount claimed.

Ms Daniliuk's reply submissions

[14] In response to FTB's costs submissions, Ms Daniliuk maintains that the Calderbank offer was reasonably rejected because it contained non-monetary concessions and restrictions, though these were not specified.

[15] She further says that she was entitled to oppose a costs position and therefore seeking an uplift for preparation of costs submissions is excessive.

Costs principles

[16] 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.[2]

[17] 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.

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

[19] Informing the Authority's approach to costs is the leading decision of *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)* where the Employment Court established key principles for the Authority to consider when determining costs.[3] Those key principles include:

(a) There is a discretion as to whether costs are awarded and in what amount;

(b) The discretion is to be exercised in accordance with principle and not arbitrarily;

(c) That costs generally follow the event;

(d) That awards will be modest; and

(e) That costs are not to be used as a punishment.

[20] Ms Daniliuk's challenge of the Authority's determination of 1 April 2026 does not justify a departure from the general principle that costs follow the event. The Authority's usual practice is to determine costs so that the Court has the costs determination before it. I do not see a risk of duplication on costs when this matter is determined by the Court or any prejudice to Ms Daniliuk issuing this costs determination as she submits.

[21] I see no reason to depart from the Authority's usual practice in this matter and issue this determination on that basis.

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

[3] *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

[22] Potential costs liability was communicated to Ms Daniliuk in directions from the Authority on 5 August and 29 September 2025. I further note that FTB has paid the penalty amount to Ms Daniliuk as required by the Authority's substantive determination.

Analysis

[23] FTB and BBS successfully defended Ms Daniliuk's claims, excepting a penalty claim for unpaid accrued annual leave, and costs should follow that event.

[24] I agree with Ms Daniliuk that no costs award should be made in relation to BBS. No submissions on costs were received from BBS and, in any event, its minimal engagement with the matter before the Authority means that any cost award would not sit comfortably in principle.

[25] Despite Ms Daniliuk's claims that FTB was unresponsive during this process, there was insufficient evidence placed before the Authority to justify any reduction in costs on that basis.

[26] The starting point is the Authority's notional daily tariff. The preliminary matter was determined on the papers taking approximately a half-day with the substantive matter taking a full one-day investigation meeting, meaning that the starting point for a costs assessment is $6,250.

[27] The daily tariff can be adjusted for relevant factors. Conduct that unnecessarily increases costs for the other party is a sufficient reason for an adjustment in costs.

Calderbank offer

[28] FTB made a valid Calderbank offer (that is, without prejudice save as to costs) on 18 December 2024. The offer was considerably higher than the penalty awarded to Ms Daniliuk and the decline of that valid and reasonable offer justifies a higher costs award. The offer included payment of outstanding leave entitlement, comprising approximately one quarter of the total offer amount.

[29] In costs submissions, Ms Daniliuk says that she declined that Calderbank offer as it contained "significant non-monetary concessions and restrictions". No evidence of this was placed before the Authority and Ms Daniliuk's written counteroffer of 19 December 2024 does not raise any non-financial concerns about the Calderbank

offer. There are no terms in the draft settlement document that I consider unreasonable. Details of the offer presented to the Authority include a non-disparagement clause, full and final settlement of all claims and a requirement for mutual confidentiality, all usual non-monetary terms in a settlement agreement.

[30] The offer was presented over a year prior to the matter being heard in the Authority and stated the consequences of declining the offer. It was open for acceptance until close of business on 10 January 2025, though was declined by Ms Daniluk on 19 December 2024. By Ms Daniliuk's statement in an email of 19 December 2024 related to that offer, I am satisfied that she was aware of the consequences of not accepting the offer. She was also represented by legal counsel at that time. I agree with submissions by FTB that it must be taken that Ms Daniliuk was properly informed of the risk of liability as regards costs if she pursued her claims and was unsuccessful.

[31] Ms Daniliuk could have accepted the offer and would have avoided significant costs for both parties by ending claims at that time.

[32] I also observe 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.[4]

Adjusting the daily rate

[33] Costs in this instance are best assessed by standing back and looking at things "in the round".[5] Ms Daniliuk was unsuccessful on all claims aside from the penalty claim. Her unjustified disadvantage claim was made on a number of grounds that required time to work through but all transpired to have insufficient foundation for success. These matters occupied a sizeable portion of the investigation meeting time.

[34] It is relevant to this consideration that, more likely than not, even limited success for Ms Daniliuk could not have been achieved without lodging a claim in the Authority. The withholding of Ms Daniliuk's final accrued leave payment was not a complex matter and did not contribute significantly to the overall investigation time. However, Ms Daniliuk's unsuccessful efforts to be paid her final pay from cessation of her employment indicate that it is likely that FTB would not have paid her final pay in full

[4] *Bluestar Print Group (NZ) Ltd v Mitchell* [2010] NZCA 385.
[5] *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156 as also referred to in *Wang v Envoco Ltd* [2026] NZERA 122 at [14].

but for Ms Daniliuk's application to the Authority. In considering any relevant uplift, I note parallels with the Authority determination in *Thing v IP South Pole Holding (NZ) Limited.* I see no reason to depart from that same approach here. In that determination, a breach of the Holidays Act 2003 resulted in a penalty issued. The subsequent costs determination also considered a reasonable Calderbank offer made approximately eight months prior to the matter being heard in the Authority:[6]

> The fact the Authority found a breach of employment standards in South Pole's failure to pay public holiday pay is not a reason to uplift costs. That breach was addressed by way of the imposition of a penalty. There will be no uplift on this basis.

[35] Turning to the Calderbank offer made by FTB, I am satisfied this was a reasonable Calderbank offer made well in advance of the investigation meeting and before the parties would have needed to incur any preparation costs for the investigation meeting. The offer (even excluding the unpaid leave amount) was still substantially higher than the amount awarded to Ms Daniliuk by the Authority.

[36] Factoring in the nature of the breach resulting in the penalty as it related to Ms Daniliuk's final pay and the Calderbank offer, an uplift to the tariff is appropriate to recognise the non-acceptance of offer. Factors considered in recent Authority decisions assisted in determining an appropriate costs uplift where a valid Calderbank offer is declined.[7] An uplift of $1,000 is appropriate in the circumstances.

[37] Such an award is also consistent with the principle that costs awards in the Authority will generally be modest. The costs awarded (based on FTB's submission from counsel and provided evidence) are less than 20 per cent of the actual incurred legal costs.

Costs Order

[38] For the reasons given above, the Authority orders Ms Daniliuk to pay FTB costs of $7,250 as a contribution towards its actual and reasonable costs.

[39] Based on Ms Daniliuk's affidavit regarding her financial circumstances, the Authority orders that this amount is paid in two equal amounts, being $3,625 within 28

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[6] *Thing v South Pole IP Holding* [2025] NZERA at [16].

[7] Such as *Thing v South Pole IP Holding* [2025] NZERA and *Knight v AsureQuality Ltd* [2025] NZERA 833 where uplifts of $1,000 were made and a $3,000 uplift in *Weston v MCNZ Group Ltd* [2025] NZERA 799.

days of this determination and the remaining $3,625 within 60 days of this determination.

Helen van Druten
Member of the Employment Relations Authority