

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 338
3316900
3322300
3352600

BETWEEN HEALTHALLIANCE N.Z.
LIMITED
Applicant in 3316900
Respondent in 3322300/
3352600

AND GARTH CUNNINGHAM
Respondent in 3316900
Applicant in 3322300/
3352600

Member of Authority: Nicola Craig

Representatives: Garth Cunningham in person
Richard Upton, counsel for the HealthAlliance N.Z. Ltd

Investigation Meeting: On the papers

Submissions received: 9 April 2026 for the applicant
20 April and 22 May 2026 for the respondent

Determination: 2 June 2026

COSTS DETERMINATION OF THE AUTHORITY

The Authority's determination

[1] Garth Cunningham worked for HealthAlliance N.Z. Limited (HealthAlliance or the company). HealthAlliance provided specialist IT services to northern district health boards. Its work is now subsumed under Health New Zealand Te Whatu Ora.

[2] The Authority issued a determination covering these three files between the parties which granted a reopening application sought by Mr Cunningham and declined a removal application by him.¹

[3] The parties were encouraged to resolve any question of costs between themselves but have been unable to do so. They provided submissions on costs.

Mr Cunningham's submissions

[4] Mr Cunningham acknowledges that he did not incur legal representation costs and submits that he does not seek to recover fees which have not been incurred. He argues that his seeking of costs is not compensation for professional fees but that a modest contribution is justified in all the circumstances.

[5] The application involved preparation and filing of a substantive application, preparation of supporting submissions and reply submissions, as well as attending the investigation meeting.² Mr Cunningham does not seek to place a monetary value on that work. A without prejudice save as to costs offer on this costs question was made by him but rejected by HealthAlliance without counteroffer.

[6] Ultimately Mr Cunningham seeks \$400, inclusive of the \$153.33 filing fee.

HealthAlliance's submissions

[7] HealthAlliance does not accept that an award of \$400 is justified for a litigant in person, in the circumstances applying here. However, in the company's brief submissions, it is not seen as economic to argue the point, so it is prepared for the Authority to award the sum Mr Cunningham seeks.

Analysis

[1] The Authority has a discretionary power to award costs which is to be used in a principled manner.³ In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* the principles guiding the Authority's approach include:

¹ *Cunningham v HealthAlliance NZ Ltd* [2026] NZERA 159.

² As above, held by audio-visual link and lasting about one and a half hours.

³ Employment Relations Act 2000, Schedule 2, cl 15.

- the statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction
- equity and good conscience is to be considered on a case by case basis
- 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
- costs generally follow the event
- awards will be modest
- frequently costs are based on a notional daily tariff.⁴

[8] Mr Cunningham was successful in his application to have the earlier determination reopened. However, he did not incur representation costs as he represented himself. It is not the Authority's usual practice to award costs to parties who have incurred no representation fees. I am not satisfied that there is any basis here to depart from that approach.

[9] Mr Cunningham is entitled to be reimbursed for the Authority's filing fee in the removal matter.

Order

[10] Within 28 days of the date of this determination, HealthAlliance is to pay Mr Cunningham \$153.33 for the Authority's filing fee in the reopening application.

Nicola Craig
Member of the Employment Relations Authority

⁴ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.