

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 361  
3413064

BETWEEN                      MACFARLANE SEYMOUR  
   Applicant  
  
AND                                HILTON HAULAGE LIMITED  
   Respondent

Member of Authority:        Eleanor Robinson  
  
Representatives:              Itania Nikolai, advocate for the Applicants  
   David Traylor, counsel for the Respondent  
  
Submissions and further      21 February and 18 March 2026 from the Applicant  
information received:        11 March 2026 from the Respondent  
  
Determination:                9 June 2026

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In a determination dated 11 May 2026 (Determination [2026] NZERA 290) the Applicant Macfarlane Seymour was determined not to have been unjustifiably disadvantaged by the Respondent, Hilton Haulage Limited (Hilton).

[2]     In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately, they have been unable to do so, and both parties have filed submissions in support of an application for a contribution to costs.

[3]     The matter involved a one-and-a-half-day investigation meeting.

[4]     Mr Traylor on behalf of Hilton, is claiming a contribution to costs in the sum of \$16,000.00, citing that the Respondent's actual costs exceeded that amount.

[5]     Mr Traylor is seeking an uplift in costs above the notional daily tariff rate in the Authority on the following basis:

- i.     Due to ambiguity in the Applicant's pleadings as to claims and the remedies sought which remained unclear despite two Amended Statements of Problem being lodged, additional work was required to engage with them. Due to the ambiguity

not being resolved, the Respondent was required to engage with all the potential claims and remedies in its evidence during the investigation meeting and submissions.

- ii. Due to the Applicant's representative intending to perform a dual role as both witness and advocate, about which the Authority raised some concerns, the Respondent was put to additional cost addressing both this fact and the fictitious legal references had made in an email from Ms Nikolai dated 24 March 2026.
- iii. Just prior to the investigation meeting, Ms Nikolai said that Mr Seymour's support person would not be available for the second day of the investigation meeting (which had been set down for some time). This involved the Respondent in incurring additional costs in addressing this eleventh-hour issue.
- iv. The Applicant's closing submissions and closing submissions in reply, contained repeated misrepresentations of the evidence presented in writing and during the investigation meeting, which involved the Respondent in incurring additional costs in analysing them. In addition, the Applicant's closing submissions in reply were not strictly in reply but instead contained novel issues that the Respondent had not had the opportunity to address during the investigation meeting or in closing submissions. This incurred further cost for the Respondent.

[6] Ms Nikolai for the Applicant, claims that the proceedings were brought in good faith, and the fact that Mr Seymour was ultimately unsuccessful does not render his claim unreasonable or increase costs.

[7] It is submitted that the Applicant making amendments to pleadings during the process in response to case management directions in an effort to clarify the issues is a normal feature of Authority proceedings and it is submitted do not justify an increased costs award.

### *Principles*

[8] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

#### **15 Power to award costs**

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

## Costs Award

[9] The Respondent was the successful party and costs normally follow the event.

[10] The principles the Authority applies in respect of costs are well-settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>1</sup>. The principles include that costs are discretionary, they are not to be used as a punishment, and awards made are consistent with the Authority's equity and good conscience jurisdiction. Costs generally follow the event and will be modest and reasonable.

[11] The Respondent is seeking an uplift in costs on the basis outlined above.

[12] I accept that additional costs were incurred by the Respondent due to some extent to the lack of clarity in the Applicant's claims, and the need to try to resolve these issues.

[13] The notional daily tariff in respect of a one-and-a-half-day investigation would be \$6,250.00. Having considered the submissions made on behalf of both parties, I consider that an appropriate level of costs to be \$8,500.00.

**[14] Mr Seymour is ordered to pay Hiltons the sum of \$8,500.00 pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000,**

[15] It is submitted for Mr Seymour that he has experienced personal and financial impact following the events giving rise to the Authority proceedings. As a result, he has suffered a reduced income. No evidence in support of financial hardship has been provided to the Authority.

[16] It may be that upon production of supporting financial evidence of his personal financial position, Hilton may be willing for Mr Seymour to make payment by instalments. Leave is reserved for the parties to revert to the Authority for future orders if such arrangements are agreed and subsequently not adhered to.

Eleanor Robinson  
Member of the Employment Relations Authority

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<sup>1</sup>*PBO v Da Cruz* [2005] 1 ERNZ 808.