

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 368
3241579

BETWEEN	JOHN PIO Applicant
AND	STRAUTMANN HOPKINS LIMITED First Respondent
	HOPKINS FARMING GROUP LIMITED Second Respondent

Member of Authority: Marija Urlich

Representatives: Erin Burke, counsel for the Applicant
Paul McBride, counsel for the First Respondent
Peter McCarthy, director Hopkins Farming Group
Limited

Investigation Meeting: On the papers

Submissions and
information received: 28 March and 21 April 2026, from the applicant
No submissions filed by the first respondent
9 April 2026, from the second respondent

Determination: 11 June 2026

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority issued a determination on 19 March 2026 which found Mr Pio had established a personal grievance for unjustified dismissal and awarded compensatory remedies in his favour totalling \$72,184.¹ Costs were reserved and a timetable set if the parties were unable to resolve this issue themselves which the Authority is advised has not been possible. The determination included any a breakdown of costs and supporting information

¹ *John Pio v Strautmann Hopkins Limited & Anor* [2026] NZERA 164.

[2] Also relevant in this costs setting is the preliminary determination issued by the Authority on 9 May 2025. In that determination Mr Pio's third amended statement of problem joining Hopkins Farming Group Limited (HFG) as second respondent in a penalty action was maintained and declined HFG's application to dismiss that action as frivolous and vexatious.² Costs were reserved.

[3] Mr Pio seeks by way of memorandum filed and served within the timetable a contribution to costs from Strautmann Hopkins Limited (SHL) and HFG. HFG has filed a memorandum in reply. SHL has not.

Costs principles

[4] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

- 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 judged against a notional daily tariff.

Mr Pio

[5] Mr Pio has incurred total costs in respect of this matter of \$42,936.56 including filing fee and printing disbursements. Supporting invoices have been provided. He seeks costs on a solicitor-client basis or in the alternative an appropriate amount significantly above the Authority's tariff scale. He submits the award sought is warranted given:

² *John Pio v Strautmann Hopkins Limited & Anor* [2025] NZERA 261.

- he was the successful party and costs should follow the event;
- the investigation meeting required two full hearing days plus a long procedural history including a preliminary determination;
- he has made reasonable efforts to settle his personal grievance including a without prejudice save as to costs offer;
- this settlement offer would have been effective if the remedies awarded by the Authority had reflected the level of harm caused to Mr Pio;
- he opposes the costs order sought by HFG;
- the application against it cannot be considered an abuse of power given the preliminary determination of the Authority maintained it being joined to the matter and declined the dismissal application brought by HFG;
- Mr Pio did not seek to wrap his action against HFG with the personal grievance claim and the assertion is inconsistent with the Authority's procedural directions and substantive determination;
- HFG has significantly overstated the nature of the allegations advanced by the applicant; and
- there is no basis on which to make a costs award in favour of HFG against Mr Pio including no evidence of actual costs incurred.

Strautmann Hopkins Limited

[6] No costs memorandum has been received for SHL. Mr McBride advised the Authority on 9 April 2026 he had no current instructions for SHL. The Authority has not received further communication from or on behalf of SHL.

Hopkins Farming Group

[7] HFG opposes any costs award being made against it and seeks its own costs award with increase up to \$20,000 having successfully defended Mr Pio's the penalty action on the following rounds:

- (i) that Mr Pio disagrees with the remedies ordered by the Authority is not a basis to seek costs and is an "abuse of process";
- (ii) Mr Pio has mistakenly sought to wrap together the alleged actions of the two respondents;
- (iii) HFG and SHL are separate legal entities and there is no basis for any costs award to be made jointly and severally;
- (iv) HFG received no without prejudice save as to costs offer from Mr Pio;

- (v) Mr Pio's allegations against HFG were serious and baseless and the proceedings required its earlier involvement in unnecessary and unwarranted steps; and
- (vi) HFG has been put to considerable cost defending the matters Mr Pio has brought against it including Mr McCarthy's time and that of accountants and external solicitors

Costs analysis

[8] Mr Pio was the successful party, and it is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party's costs. The investigation meeting was two full days, and the preliminary matter was determined on the papers. Using the Authority's daily tariff the notional starting point is \$8,000 for the investigation meeting.

[9] A without prejudice save as to costs offer (the offer) was made by Mr Pio to SHL. I accept the submission the offer does not extend to HFG because it is a separate legal entity. The offer is not effective because it was about \$10,000 more than the total order made in Mr Pio's favour by the Authority.

[10] Matters concerning the reconstruction of Mr Pio's files were appropriately and transparently dealt with and this did not add unreasonably to the investigation meeting time.

[11] I accept there was factual complexity in this matter. The investigation meeting was the opportunity to thoroughly interrogate the issues for determination and that opportunity was available because all the relevant witnesses and information was present. The costs involved in the preliminary matter are dealt with separately. Matters involving provision of information and the adjournments are not grounds to increase or decrease costs. While these factors have increased the Authority's involvement with this matter and the parties' time, they were matters which were able to be worked through and have not unnecessarily increased costs.

[12] Generally successful parties cannot claim for their own time taken off work to prepare for a proceeding. Costs compensation is usually restricted to professional representation and disbursements. The parties are on notice as to the supporting

evidence required if costs were sought.³ While executive time can be recognised as “expenses”, reimbursement of such in a costs setting is limited. Mr McCarthy is a director of HFG. I accept Mr McCarthy in his role as a director has represented HFG in the proceedings including the preliminary matter. HFG were represented by counsel very early in this matter in relation to matters concerning provision of relevant information. Supporting evidence regarding those costs has not been provided and there is no supporting evidence before the Authority of qualifying reimbursing expenses for Mr McCarthy or of other professional costs HFG has incurred in relation to these proceedings. There is no costs award made in HFG’s favour.

[13] A costs award is warranted against HFG in respect of the preliminary matter. While it has successfully defended a penalty action brought against it, its opposition to being joined to the proceedings and the cl 12A dismissal application was not successful. Mr Pio has incurred costs in respect of the preliminary application. That a penalty order was not made in the substantive determination does not neutralise the costs Mr Pio incurred in relation to the preliminary application. Given that matter was determined on the papers a costs award of \$1,000 against HFG in favour of Mr Pio is reasonable.

[14] A fair costs award, given all the relevant circumstances is in Mr Pio’s favour as follows:

- (i) Stratmann Hopkins Limited is to pay Mr Pio \$8,000 as a contribution to costs of professional representation incurred in respect of the determination plus disbursement of \$179.55; and
- (ii) Hopkins Farming Group Limited is to pay Mr Pio \$1,000 as a contribution to costs of professional representation incurred in respect of the preliminary determination.

Marija Urlich
Member of the Employment Relations Authority

³ N1 at [48].