

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 381
3330600

BETWEEN MARY BASTION
 Applicant

AND CASHMERE PRIMARY TE PAE
 KERERU SCHOOL BOARD
 Respondent

Member of Authority: Peter van Keulen

Representatives: Elizabeth Lambert for the Applicant
 Paul Robertson and Joy Walpole for the Respondent

Investigation Meeting: On the papers

Submissions Received: 16 February 2026 and 14 April 2026 from the
 Respondent
 2 March 2026 and 5 June 2026 from the Applicant

Date of Determination: 16 June 2026

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 22 December 2025 I found that I did not have jurisdiction to investigate Mary Bastion’s employment relationship problem with Cashmere Primary Te Pae Kereru Board (the Board) and I struck it out it.¹

[2] In my determination I reserved costs so that the parties could try to agree costs. The parties have been unable to agree and now the Board seeks an order for costs.

Application for costs

[3] The Board seeks an award of costs of \$6,750 based on the application of the

¹ *Mary Bastion v Cashmere Primary Te Pae Kereru Board* [2025] NZERA 841.

Authority's daily tariff for one day with an uplift.²

[4] This matter was determined on the papers. In this regard, the Board submits that one day of the daily tariff for costs is the equivalent to the amount of time spent dealing with this matter on the papers. It then submits that an uplift should be made to the daily tariff based on the complexity of the employment relationship problem, the convoluted nature of the problem and the way it was expressed, and that there was no reasonable prospect of success for Ms Bastion's problem.

[5] Ms Bastion says that the Board's refusal to attend mediation and the circumstances of her dismissal are material to the award of costs. Ms Bastion's arguments are that there should be no award for the Board as it unreasonably refused to attend mediation and because her dismissal was a no-fault termination based on her choice not to be vaccinated against COVID-19.³

Analysis

Costs in the Authority

[6] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.⁴

Costs for CablePrice

[7] The starting point is that costs should follow the event. I am not satisfied that this employment relationship problem bears the hallmarks of *GF v OO*, where the Court decided at [20]:⁵

More generally, I consider it to be in the interests of public sector organisations such as the respondent that cases involving COVID-19 and the intersection of employment rights and obligations be permitted to come before the Court without unnecessary impediment, to enable a degree of clarity to be given to impacted, or potentially impacted, workers; and affected, or

² The normal practice of the Authority when setting costs, is to apply a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff.

³ *GF v OO* [2022] NZEmpC 1.

⁴ For further information about the factors considered in assessing costs, see:

www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

⁵ *GF v OO* [2022] NZEmpC 1.

potentially affected, employers. That comes at a cost but it is a cost which, in my view, is most fairly shouldered by the respondent public sector organisation in this case.

[8] These considerations of the Court, as well as the fact that GF was an undischarged bankrupt, are not applicable to the parties and the circumstances of Ms Bastion's dismissal.

[9] Absent any policy reason or circumstances justifying that costs lie where they fall, I am satisfied that the Board is entitled to an award of costs, as the employment relationship problem was resolved in favour of the Board.

Applying the daily tariff

[10] I accept that it is appropriate to apply the daily tariff to quantifying the order for costs in this matter. As I have described before, I do this by assessing what an on the papers application corresponds to in terms of an investigation meeting i.e. is it the equivalent amount of work for a one-day investigation meeting or some other proportion. In this case given the unique and complex legal arguments and the additional work required due to complex and confused nature of the Statement of Problem, I believe the work involved is the equivalent of a one-day investigation meeting. That is \$4,500.⁶

Increasing the daily tariff

[11] I accept the Board's view that Ms Bastion's employment relationship problem was complicated and convoluted and this increased the time required to respond to it. However, I have factored this additional time into my calculation of the amount of the daily tariff to be used for calculating costs – generally I assess on the papers applications as corresponding to a half day of the daily tariff, but more complex or difficult applications are one day. So, in applying the daily tariff for one day I have allowed for the difficulty and additional time required. A further increase by way of an uplift is not necessary.

[12] Conversely, I do not accept the Board's position that Ms Bastion's employment relationship problem had no reasonable prospect of success.

[13] I will not increase the daily tariff amount.

⁶ This approach is the same approach I applied in similar circumstances in *Michael Knowler v CablePrice (NZ) Limited* [2026] NZERA 15.

Reducing the daily tariff for the Board's refusal to attend mediation

[14] Ms Bastion says the Board refused to attend mediation and this refusal was unreasonable. And, it follows, therefore, that I should reduce the daily tariff so that no award for costs is made. The rationale for this submission is that had the Board attended mediation this employment relationship problem might have settled obviating the need for the on the papers investigation and determination. Ms Bastion supports this submission with reference to two decisions of the Employment Court, *Englebeck v AG* and *Open Systems Ltd v Pontifex* and a decision of the Court of Appeal, *Gallagher Group v Walley*.⁷ I am not persuaded that these decisions support the submission that costs should be reduced to zero because of a party's refusal to attend mediation.

[15] In any event, there is a compelling reason for not reducing the daily tariff for the Board's refusing to attend mediation. In this case the Board's decision not to attend mediation was not unreasonable given the jurisdictional issues and the overall circumstances of this problem. Also, that decision was affirmed by me when I decided not to direct the parties to mediation, given these issues.

[16] This is not a situation where the daily tariff should be reduced because of the Board's refusal to attend mediation.

Conclusion

[17] The Board is entitled to receive an award of costs. The daily tariff should be applied for a one-day investigation meeting, being \$4500, without any adjustment.

Order

[18] Ms Bastion is to pay the Board \$4,500 as a contribution to its costs in this matter.

Peter van Keulen

Member of the Employment Relations Authority

⁷ *Englebeck v AG* [2000] EMHNZ 216; *Open Systems Ltd v Pontifex* [1995] 2 ERNZ 211; and *Gallagher Group v Walley* [1999] 1 ERNZ 490 (CA).