

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 71
3307920

BETWEEN EDMUNDO MARCELO
Applicant

AND GOLDEN BULLS LIMITED
First Respondent

AND JONG MOK YOON
Second Respondent

Member of Authority: Helen van Druten

Representatives: Hayley Johnson, advocate for the Applicant
Jong Mok (Albert) Yoon, as the Respondent

Costs Submissions: 30 January 2026 from the Applicant
10 February 2026 from the Respondent

Investigation Meeting: 14 August and 11 September 2025 at Auckland

Determination: 13 February 2026

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination of 18 December 2025, Golden Bulls Limited was ordered to pay Mr Marcelo personal grievance remedies of \$13,707 for lost wages and compensation following his unjustified dismissal.¹ Mr Marcelo's unjustified disadvantage grievances were unsuccessful.

[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.

[3] On 30 January 2026, Mr Marcelo filed a submission in support of a costs application. Based on the Authority's notional daily tariff, Mr Marcelo's representative

¹ *Marcelo v Golden Bulls Ltd & Anor* [2025] NZERA 814 at [106].

claims \$6,250 as a contribution to costs for the one and a half days of the investigation meeting.

[4] He further says that no travel or “pre-mediation” costs were included in the total calculation and provided a copy of the invoice showing that costs incurred were in excess of the amount claimed.

[5] Mr Yoon, as director of Golden Bulls Limited, submitted that costs should be nil or a nominal amount as:

- a. Mr Marcelo had mixed success. He was unsuccessful with his unjustified disadvantage claims;
- b. A considerable proportion of time spent in the investigation meeting was investigating claims that did not succeed;
- c. On 25 May 2025, Mr Marcelo’s representative raised further issues for investigation including penalty-based claims. These additional claims expanded the scope of the proceedings and required further documentation and submissions in response; and
- d. Golden Bulls Ltd fully engaged with the Authority on this matter.

Costs principles

[6] The Authority’s discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² that costs are modest and that they normally follow the event.

Mixed success

[7] As Mr Yoon has submitted, the issue raised here is that both parties can claim success. In determining a costs award in such cases, this was resolved by the Employment Court in *Coomer v JA McCallum and Son Limited* where the Court decided that any success for an applicant is sufficient success for the purposes of costs; it does not matter that an applicant may have lost a significantly larger or more complex claim if it was successful with any claim.³

² [2005] 1 ERNZ 808.

³ *Coomer v JA McCallum and Son Ltd* [2017] NZEmpC 156.

[8] Noting that Mr Marcelo's success, albeit limited, could not have been achieved without filing a case in the Authority, I consider that he should receive a costs award. However, this must be balanced with the principles set out in *Da Cruz* recognising that costs are not to be used as a punishment.

[9] Costs are also discretionary and awards made must be consistent with the Authority's equity and good conscience jurisdiction.

Costs analysis

[10] The starting point is the Authority's notional daily tariff. With a full day and a part day for the investigation meeting that starting point is \$6,250, being \$4,500 for the first day of the investigation meeting and half of \$3,500 (\$1,750) for the second day.

[11] 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.

[12] In these circumstances, I agree with Mr Yoon's submission that Mr Marcelo raised a number of claims, including bullying, wage claims and his transfer between sites, that required time to work through but transpired to have insufficient foundation for an unjustified disadvantage claim. The additional issues raised by Mr Marcelo's representative on 25 May 2025 further increased the time costs spent by Mr Yoon responding to those claims and they ultimately did not succeed.

[13] A significant portion of the meeting was used to hear those additional claims which were unsuccessful. The 'catch-all' approach to claims made by Mr Marcelo resulted in unnecessary time taken to work through each claim and costs to Golden Bulls Limited preparing their responses to those claims.

[14] Had those claims not been heard, the meeting would have been confined to the circumstances surrounding Mr Marcelo's dismissal and would likely have taken less than a full day.

[15] Whilst mixed success does not disentitle an applicant's right to be awarded costs it can, in some circumstances, mean that the amount of costs should be reduced.

[16] Taking the principle-based approach to costs as in *Da Cruz*, the proportion of time spent on the procedural dismissal elements as a proportion of the whole claims

submitted and the mixed success, I consider the notional tariff of three quarters of an investigation meeting day is appropriate.

Costs Order

[17] For the reasons given above, the Authority orders Golden Bulls Limited to pay Mr Marcelo costs of \$3,375 as a contribution towards his actual and reasonable costs within 28 days of this determination.

Helen van Druten
Member of the Employment Relations Authority