IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 92
3327580

BETWEEN	YOLIND STRYDOM Applicant
AND	KINGSWAY SCHOOL BOARD OF TRUSTEES Respondent

Member of Authority:	Robert Davies
Representatives:	Keziah Singleton, counsel for the Applicant Stephen Corlett, counsel for the Respondent
Submissions received:	5 November 2025, from the Respondent 20 November 2025, from the Applicant in reply
Investigation meeting:	On the papers
Determination:	20 February 2026

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This determination resolves the matter of costs following the Authority's substantive determination.[1] The Authority dismissed all of Ms Strydom's claims. The proceedings also included an application for interim reinstatement. The Authority declined that application.[2]

[2] The Authority reserved costs in both matters and encouraged the parties to resolve them. They have been unable to do so. As the successful party, KingsWay School Board of Trustees (KingsWay) has applied to the Authority for increased costs

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[1] *Strydom v KingsWay School Board of Trustees* [2025] NZERA 635.
[2] *DBY v SLN* [2025] NZERA 86.

in the sum of $21,375, representing agreed notional daily tariff costs of $14,250 plus an uplift of $7,125.

[3] I did not hear the interim or substantive proceedings. I have determined this application on the papers after reviewing both determinations and the parties' written submissions.

The Authority's approach to costs

[4] The Authority's discretionary power to order costs is found in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act).

[5] The Employment Court has described the principles governing the Authority's costs discretion in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*.[3] Those principles include that the Authority must exercise discretion according to principle, having regard to its equity and good conscience jurisdiction; that costs will usually follow the event; that awards should remain modest; that the Authority often measures costs against a notional daily rate (the notional tariff); and that the Authority may take account of conduct that unnecessarily increases costs, including rejection of Calderbank offers.[4]

[6] In *Fagotti v Acme & Co Ltd*, the full Employment Court confirmed the continued application of those principles and recognised the value of a commonly applied and well-publicised notional daily rate in the Authority. The Court also cautioned that parties who incur costs beyond the notional rate cannot confidently expect to recoup them by way of costs orders.[5]

[7] In *Mokoaraka v Department of Corrections*, the Authority set out a methodology to costs awards involving Calderbank offers and references the Court's decision in *Booth v Big Kahuna Holdings Ltd*.[6] The notional tariff anchors the analysis. A party seeking departure from the notional tariff must justify that by reference to identifiable features of the case. The Authority must ensure moderation and proportionality.[7]

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[3] *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808.
[4] *Calderbank v Calderbank* [1976] Fam 93 (CA).
[5] *Fagotti v Acme & Co Ltd* [2015] ERNZ 919.
[6] *Booth v Big Kahuna Holdings Ltd* [2014] NZEmpC 43.
[7] *Mokoaraka v Department of Corrections* [2019] NZERA 636.

[8] This is because, at the end of the day, costs are not exemplary or punitive. The Authority does not use costs to sanction a party for bringing or defending proceedings. It awards costs to compensate for expenditure that otherwise reasonably should not have been incurred.

Notional daily tariff starting point

[9] The parties agree on the notional daily tariff's starting point:

a. one meeting day for the interim reinstatement application; and
b. two and a half meeting days for the substantive investigation meeting.

[10] The agreed notional daily tariff starting point is $14,250. The issue is whether any feature justifies departure from that starting point and, if so, whether to the extent sought by KingsWay (or some lesser extent).

Settlement offers

[11] KingsWay relies on three "without prejudice save as to costs" settlement offers to Ms Strydom. Such offers, commonly described as Calderbank offers, permit the Authority to consider their rejection when determining costs.

[12] The Authority assesses rejection of such offers by reference to the circumstances as they existed when the offer was made. The question is whether, at the time of rejection, it was objectively unreasonable to continue the proceeding.

[13] The Authority does not decide the issue by hindsight alone and monetary value informs the inquiry but does not determine it. Instead, the Authority considers timing, clarity of issues, the maturity of the evidence, as well as any material non-monetary terms.

The parties' submissions

[14] KingsWay submits that:

a. It succeeded entirely in both proceedings;
b. It made three substantial settlement offers;
c. Acceptance of those offers would have avoided significant costs;
d. The matter involved broad issues and extensive evidence; and

e. The Authority should award increased costs.

[15] KingsWay relies on *Lazaro v Waimea Contract Carriers Ltd,*[8] *Tomas v Sanders,*[9] *McCollum v Annex Group Ltd,*[10] and *Young v Ecopile Ltd.*[11]

[16] Ms Strydom accepts KingsWay's entitlement to tariff costs but opposes any uplift. She submits that she reasonably rejected each offer in context; that the first required her resignation, the second was made while the interim determination was pending, that the third failed to address reputational concerns, and that the litigation was not conducted improperly.

Scope and conduct of the proceeding

[17] The substantive proceeding required determination of multiple contested issues, including contractual entitlements, alleged disadvantages, health and safety concerns, and, ultimately, unjustified dismissal. The evidential record was clearly substantial.

[18] However, the Authority has not found procedural misconduct, non-compliance with directions, or abuse of process. The claims were unsuccessful but not characterised as frivolous or vexatious. The notional tariff already reflects the length and complexity of the hearing process.

Authorities

[19] The cases cited by both parties reflect settled principles.

[20] In *Lazaro, Tomas,* and *McCollum*, the Authority accepted that rejection of a genuine and realistic Calderbank offer may justify increased costs where that rejection results in avoidable expenditure. In each of those cases, the Authority exercised a calibrated discretion. It did not apply a formula. It identified specific features that justified departure from the tariff and tailored the uplift to those features.

[21] None of the cases establish that rejection of any offer exceeding the ultimate outcome automatically warrants a substantial departure from the tariff. Like *Mokaraka*, they provide a structural guide suggesting the Authority anchor costs in the tariff,

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[8] *Lazaro v Waimea Contract Carriers Ltd* [2025] NZERA 573.
[9] *Tomas v Sanders* [2024] NZERA 613.
[10] *McCollum v Annex Group Ltd* [2023] NZERA 573.
[11] *Young v Ecopile Ltd* [2013] NZERA 3.

identify the features justifying departure, and ensure any uplift remains proportionate and restrained.

Analysis

[22] As indicated, KingsWay relies on Ms Strydom's rejection of three valid Calderbank offers dated 8 March 2024, 5 December 2024, and 8 April 2025 to justify the uplift sought.

8 March 2024

[23] KingsWay made the first offer at an early stage. Ms Strydom submits it required her resignation and that continued employment mattered to her at that time. I accept that a resignation requirement is a material term and that it went beyond resolving the employment relationship problem on the table then. At that early stage, Ms Strydom's decision to prioritise continued employment was not objectively unreasonable, and so it follows, nor was her rejection of this offer.

5 December 2024

[24] KingsWay made the second offer after the interim reinstatement hearing but before the Authority issued its interim determination. Ms Strydom says she chose to await that determination. At that time, the substantive issues remained contested. I find that Ms Strydom's rejection of the 5 December 2024 offer was also therefore not objectively unreasonable.

8 April 2025

[25] KingsWay made the third offer after the Authority declined interim reinstatement and shortly before the substantive investigation meeting. The offer explained the consequences of failing to accept it, including that it could be presented at costs stage and relied on to justify an increase in costs. The offer was also substantial and so Ms Strydom would have been materially better off had she accepted it.

[26] By April 2025, the parties' positions were defined, and the substantive investigation meeting was imminent. Continuing at that point exposed both parties to further avoidable costs associated with final preparation, hearing attendance, and post-hearing processes.

[27] However, I also accept that most preparatory costs had already been incurred: this final offer came 12 days after Ms Strydom's reply evidence had been exchanged, which essentially represented the final step in case management. As indicated above, acceptance of this offer therefore would not have avoided all substantive costs.

[28] Ms Strydom submits that she sought vindication and resolution of reputational concerns. While I accept that litigation may serve non-financial objectives like these, the Authority must assess reasonableness objectively.

[29] In my assessment, by April 2025, it was objectively unreasonable to proceed to a full investigation meeting in the face of an effective settlement offer capable of avoiding further material costs. Ms Strydom's rejection of this offer was therefore unreasonable.

Actual costs and proportionality

[30] KingsWay submits its actual legal costs exceeded the notional tariff (and the amount of increased costs sought) but provides no evidence of those costs. The absence of such evidence constrains the proportionality assessment of any uplift. Although I accept what KingsWay has submitted, without evidence of actual expenditure, the Authority necessarily assesses uplift in a degree of abstraction.

[31] That evidential vacuum counsels caution: the Authority must ensure any departure from the notional tariff remains measured and fair on the basis of the information it has. Because the 8 April 2025 offer could only have avoided part (but not all) of the substantive costs, proportionality requires that any uplift also reflect this limited utility.

Overall assessment

[32] I consider that only one feature justifies departure from the notional tariff: Ms Strydom's unreasonable rejection of the 8 April 2025 offer. Her rejection of the earlier two offers was not objectively unreasonable.

[33] Additionally, this case does not otherwise involve procedural abuse or litigation misconduct. The claims were contested and required adjudication.

[34] In my view, to decline any uplift entirely would fail to recognise that avoidable costs followed Ms Strydom's rejection of the 8 April 2025 Calderbank offer. However,

to grant a substantial uplift would exceed what compensatory principles justify, particularly given:

a. The late stage at which the 8 April 2025 offer was made;
b. The fact that most costs had already been incurred; and
c. The absence of evidence of actual costs.

[35] Exercising my discretion conservatively and proportionately, I award a modest uplift of $2,000 over the starting point set by the notional tariff.

Order

[36] Ms Strydrom must pay costs to KingsWay School Board of Trustees in the total sum of $16,250. Ms Strydom must pay those costs within 28 days of the date of this determination.

Robert Davies
Member of the Employment Relations Authority