NOTE: This determination contains an order at paragraph [5] prohibiting publication of certain information

IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 97
3389544

	BETWEEN	A LABOUR INSPECTOR Applicant
	AND	NQX LIMITED First Respondent
	AND	TZF Second Respondent
	AND	GAF Third Respondent

Member of Authority:	Robin Arthur
Representatives:	John Hilaro, counsel for the Applicant Alexandria Till, counsel for the Respondent
Submissions received:	From the Respondent on 14 November and 12 December 2025 and from the Applicant on 5 December 2025
Determination:	23 February 2026

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Labour Inspector withdrew his application to the Authority in this matter after the parties had attended mediation and before any steps were taken for an investigation by the Authority, such as directing the parties to lodge witness statements and relevant documents.

[2] After the withdrawal the respondents sought an order for costs. Their costs application has, by agreement, been determined on the basis of written submissions.

[3] For the factual background, this determination has relied on the statement of problem, statement in reply and documents provided by the parties.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Order prohibiting publication of the parties' names

[5] The names of the respondents and a former employee who made a complaint investigated by the Inspector are prohibited from publication in relation to this matter. This order is made, under clause 10 of Schedule 2 of the Act, because the allegations made about the respondents in the Inspector's application to the Authority were not tested in an Authority investigation before his application was withdrawn. The proper administration of justice is not served by having the respondents' names permanently linked in the public record with serious allegations about failures to meet employment standards without the evidence said to support those allegations having been heard and findings made to the necessary standard of proof.[1] Similarly, as the respondents' own allegations about the former employee, and why he complained to the Inspector, were not examined, his name should also be protected.

[6] The respondents are referred to in this determination by randomly selected letters not related to their actual name: the first respondent is NQX Limited, a company; the second respondent, TZF, is the majority shareholder and the director of the company; and the third respondent, GAF, is a minority shareholder. TZF and GAF are husband and wife.

[7] The complainant employee is referred to as Mr A.

[8] The order does not apply to any communication about this matter or its factual background to or between relevant regulatory state agencies, such as the Labour Inspectorate and Immigration New Zealand.

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[1] *Erceg v Erceg* [2016] NZSC 135 at [3] and [18].

The Inspector's case

[9] The Inspector had carried out inquiries after Mr A and one other former employee of NQX Limited made complaints to the Labour Inspectorate. This included interviews of TZF and GAF and the former employees. He finalised an investigation report on 2 May 2025. Relying on conclusions reached in his report, the Inspector lodged an application in the Authority on 4 July 2025. The Inspector sought orders for NQX Limited to pay arrears and penalties due to shortcomings in leave records and payments for two employees. His main claim, however, concerned an allegation that TZF sought and received a premium of $60,000 from Mr A for his job with NQX Limited. The Inspector said evidence from Mr A showed five members of his family in the Punjab region of India had made payments totalling $60,000 to an account held in the name of GAF in order to secure Mr A's employment with NQX Limited. The Inspector also sought orders finding TZF and GAF were persons involved in breaches of employment standards so they could be required to pay arrears due to Mr A if NQX Limited could not pay those amounts.

[10] At the initiative of counsel for the respondents, and by consent, the time for lodging a statement in reply to the Inspector's application was suspended and the parties were directed to mediation. The Authority also directed a statement in reply was to be lodged no later than 14 days after mediation if the matter was not resolved there.

[11] The parties attended mediation on 5 August, without resolving the matter.

[12] The day after mediation Mr A sent an email message to the Labour Inspector and NQX Limited. His email said NQX Limited and TZF had not asked him for any money for the job and he had not paid any money. He said money transferred by his family members was for the purchase of agricultural tools from the father of TZF. He said he was "misguided" by his sister who had "created and provided me the supporting documents from India as I was in New Zealand at that time".

[13] An Inspector spoke by telephone with Mr A in the following week. According to the Inspector Mr A said his sister was visited by relatives of TZF and asked for Mr's A complaint to be withdrawn. The Inspector said he also received an email from Mr A's sister which said she and Mr A did not want to continue the case and decided to "sort it in India with [TZF]".

[14] During this time counsel for the parties corresponded over the "recanting email" sent by Mr A. In that correspondence counsel for the respondents advised that a respondent had contacted Mr A's cousin. The cousin was said to be involved in the agricultural tools transactions. This cousin had then "reached out to his cousin", a reference to either Mr A or to Mr A's sister.

[15] On 19 August the respondents sent their statement in reply to the Authority, in accordance with the directions made when they were sent to mediation. Due to technical issues in the Authority's information system the statement was not received then. After the problem was identified a further copy was sent.

[16] The respondents' statement in reply accepted there had been some shortcomings in its holiday leave records, since rectified by payment of arrears, but denied all the more serious allegations about the payment of a premium. It gave an extensive explanation of the transactions with Mr A's family as all being related to the sale of agricultural equipment from a farming business TZF and GAF had run in India before they came to New Zealand. It criticised the Labour Inspector's investigation of Mr A's complaint. It said the Inspector's report had resulted in NQX Limited's main customer cancelling its contract with the company and in Immigration New Zealand cancelling its status as an accredited employer for work visa approvals. The statement also said better investigation by the Inspector would have more quickly disclosed no premium was paid for Mr A's job.

[17] An Inspector had a further discussion with Mr A by telephone on 25 August. Mr A reportedly said his complaint about paying a premium was "made up" at the instigation of his sister who had also, later, told him to send the "recanting email" to the Labour Inspectorate.

[18] After further correspondence between counsel the Labour Inspector lodged a memorandum in the Authority withdrawing his application on 15 September 2025.

Submissions on costs

The respondents' claim

[19] The respondents' submissions on costs addressed what they described as being within the scope of the Authority's power to award costs for an application referred to mediation but withdrawn before an Authority investigation was held. This was, in part,

a reference to discussion with counsel in the case management conference held to schedule their costs submissions. As discussed in that conference a costs award could not address the respondents' view that they had grounds to pursue the Inspector for damages for improper use of statutory powers in how he had investigated Mr A's complaint. Examination of what the Inspector had or had not done may have occurred if an Authority investigation had gone ahead but, as a result of the withdrawal, there was no tested evidence on whether the Inspector had unreasonably relied on the complaint or had not acted in good faith in carrying out his inquiries.

[20] Within that context on the scope of a costs award, the respondents said their actual costs for responding to the Inspector's application were $22,474.50. They provided copies of the invoices for legal fees incurred between May and November 2025. They sought a contribution of $10,516 to those costs. Their calculation of this amount was said to be based on costs scales set by the High Court Rules 2016.

[21] The respondents said they incurred disproportionately higher costs because the Inspector's investigation was not thorough and impartial and their counsel had to reinvestigate and test evidence not considered by the Inspector in drafting his report. They acknowledged parties could not normally claim for preparing and attending mediation but submitted the Inspector did not attend mediation in good faith and this had increased their costs for counsel to prepare for and take part in the mediation.

The Inspector's argument

[22] The Inspector submitted he had acted fairly and reasonably in carrying out his statutory duty to investigate and, where appropriate, commence an action in the Authority about alleged breaches of employment standards. He denied the respondents' allegation that he had not attended mediation in good faith and said withdrawal of the proceedings was not made as a result of matters that occurred at mediation.

[23] He submitted he had taken the steps necessary to confirm the authenticity and bona fides of the recanting email, which had taken him by surprise, and had then withdrawn his application without unnecessary delay.

[24] He also relied on a principle expressed in an earlier Authority determination about an application withdrawn a week before a scheduled investigation meeting. In that case the Authority member had expressed the view that, because no investigation

meeting was actually held, no findings were made that could allow for an award of costs on the basis of some unlawful conduct having occurred.[2]

[25] He submitted costs should lie where they fall but, if any were awarded, he submitted those costs must be moderate and not punitive.

Relevant principles on costs

[26] The Authority has a broad discretion to award such costs and expenses as the Authority thinks fit.[3] The discretion must be exercised on a principled basis. Established principles include:[4]

- the Authority's discretion extends to both whether costs will be awarded and, if so, the amount;
- costs are not to be punitive or an expression of disapproval of a party's conduct, although conduct which has increased costs unnecessarily can be taken into account in considering an award;
- costs will generally follow the event;
- the Authority may assess costs against a notional daily rate, applied flexibly with regard to the particular characteristics of the case;
- the nature of the case can influence questions of costs; and
- awards will generally be modest.

[27] A Labour Inspector does not have immunity as a statutory officer from the usual costs consequences of pursuing litigation but, in some cases, it may be appropriate not to order costs or to reduce costs against Labour Inspectors for carrying out their statutory functions.[5]

[28] The Act promotes mediation as the primary problem-solving mechanism. The next stage in the dispute resolution system, if needed, is an Authority investigation. It is not intended to be an overly legalistic or costly forum. As the Employment Court has noted in considering a challenge on costs in the Authority:[6]

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[2] *Gulf Rubber NZ Limited v NZAEPMU* (ERA Auckland, AA 2017/07, 24 July 2007) at [12].
[3] Employment Relations Act 2000, Sch 2 cl 15.
[4] *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135.
[5] *GS Tech Ltd v A Labour Inspector* [2018] NZEmpC 127 at [9] and *A Labour Inspector v Jeet Holdings Limited* [2020] NZEmpC 69 at [17]-[19].
[6] *Stevens v Hapag-Lloyd (NZ) Ltd* [2015] ERNZ 224 at [94].

> This ought, in ordinary circumstances, to reduce the amount parties may reasonably be expected to expend on legal resources. While it is each party's right to instruct counsel and (if they do) to instruct counsel of their choosing, and to apply significant legal resources to the pursuit or the defence of a claim in the Authority at first instance, that is a choice they make including having regard to the generally applied daily rate.

[29] Costs associated with preparing for and attending mediation are typically not awarded unless some particular or unusual circumstances makes it appropriate to do so.[7] One such circumstance has been where a party has unreasonably refused or failed to attend mediation.

[30] Costs may be awarded where proceedings in the Authority are withdrawn after the parties have spent time and money preparing for an investigation meeting by lodging witness statements and necessary documents. Examples include matters where the application to the Authority was withdrawn two days before an investigation meeting after all witness statements and documents were lodged, after the investigation meeting had started, and three weeks before the investigation meeting but after six witness statements were prepared and lodged.[8]

Assessment

[31] An employer can reasonably incur costs of legal representation when subject to a Labour Inspector's inquiries about compliance with employment standards or in responding to an Inspector's application to the Authority alleging those standards have been breached. The expense of doing so is a choice the employer makes but the circumstances in which some of those costs may be recovered are limited. It does not extend to the cost of preparing for and attending mediation, except for limited situations.

[32] Matters primarily related to alleged breaches of employment standards are, under s 159AA of the Act, exempt from the Act's otherwise mandatory expectation that mediation is the appropriate initial step to address those issues. The section does, however, allow the Authority to direct the parties to mediation in some situations such as, which happened here, where the parties agree to mediation. In this case the direction to mediation was initiated by the respondents and agreed to by the Inspector. Nothing

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[7] Practice Direction of the Authority (February 2024): Costs in the Authority at para 5 and *Jinkinson v Oceana Gold (NZ) Ltd* [2011] NZEmpC 2 at [16].
[8] *Hadland v Truck Stops (NZ) Ltd* [2018] NZERA Christchurch 108, *Burns–Francis v Media Works TV Ltd* [2017] NZERA Auckland 219 and *Stewart Financial Group v MacDonald* [2020] NZERA 362.

about that direction suggested a change to the general rule that attendance at that mediation would not be included in any costs order made by the Authority. Parties can, of course, voluntarily agree on a payment of costs as a term of any agreement they reach in mediation.

[33] There was no evidence sufficient to establish the respondents' allegation that the Inspector did not attend mediation in good faith or had failed to act reasonably and diligently in what was done to check Mr's A claim of having paid a premium.

[34] The Inspector's report, at pages 5 to 7, set out the documents gathered and interviews conducted regarding the allegation about the premium. It refers to interviews on this issue with Mr A, Mr A's father, Mr A's sister, TZF and GAF. TZF and GAF were provided with copies of documents given to the Inspector by Mr A, given an opportunity to comment on them and also provided documents of their own regarding the transactions in issue.

[35] The report sets out the basis on which, analysing those interviews and documents, the Inspector reached his finding that it was more likely than not that a premium had been paid. On its face, the report does not show the Inspector acted unreasonably in reaching that conclusion.

[36] The fact Mr A subsequently withdrew his claim was not enough to make a finding, for the purpose of assessing costs, that the Inspector had acted unreasonably in reaching the view he did on the basis of the information available to him at the time.

[37] It was, of course, possible that the Inspector may have reached a different conclusion in his report, on which his subsequent application to the Authority was based, if he had done more to inquire into the information about the transactions that were said by Mr A to have comprised the payment of the premium. Given those transactions incurred in India, the Inspector's ability to do more was limited.

[38] On the other hand, it is also possible Mr A's withdrawal of his complaint and his subsequent account about those transactions does not disclose the whole or the real story of what has gone on here. Behind the scenes involvement of family members to influence the progress of legal proceedings one way or another does, understandably, give some cause for doubt.

[39] Thinking about what *possibly* happened does not, however, resolve the question of what *probably* happened, that is which account was more likely than not correct.

[40] The withdrawal of the proceedings meant no investigation meeting took place in which the testing of evidence could have result in findings on that balance of probabilities. In that situation, it cannot be reliably concluded that either account was more *probably* correct.

[41] The fact is the claim was withdrawn. An assessment on the questions of costs cannot be based solely on the respondents' unproven assertion that they were right all along and there was nothing, in respect of the premium allegation at least, to answer for. To simply accept their assertion would amount to punishing the Inspector for carrying out his statutory functions of investigating complaints and then acting on conclusions reached in his inquiry.

[42] To hold otherwise also risked a chilling effect, contrary to the wider public interest, on Labour Inspectors robustly carrying out their statutory functions to promote the effective enforcement of employment standards. To acknowledge this object of the Act is not to diminish their responsibility to act reasonably in carrying out their duties.[9]

[43] In the circumstances of this particular case, the ordinary principles on costs therefore apply. The respondents' attendance at mediation does not attract an award for costs of legal representation they may have incurred in having counsel prepare and attend that occasion. There was no conduct by the Inspector, up to the fact of withdrawing the application, which was reliably established to have unreasonably increased the respondents' costs. Apart from lodging a statement in reply, the respondents had not been called upon to do anything to prepare for an Authority investigation, such as lodging witness statements and additional relevant documents. Lodging their reply does not warrant an award of costs, absent some other established unreasonable action having unnecessarily increased their costs.

[44] The withdrawal was made reasonably promptly when the basis for the Inspector's application to the Authority unexpectedly changed. No other costs in preparation for an Authority investigation were incurred up to the date of withdrawal.

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[9] Employment Relations Act 2000, s 3(ab), s 223A and 229.

Outcome

[45] For the reasons given, the application for an award requiring the Inspector to pay costs to the respondents is declined. Costs lie where they fall.

[46] If the outcome was different, the respondents' assessment of costs made using the High Court Rules scale would not have been accepted. The Authority has its own established and accepted methodology.

Robin Arthur
Member of the Employment Relations Authority