IN THE EMPLOYMENT COURT OF NEW ZEALAND
WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA

[2025] NZEmpC 263
EMPC 306/2025

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	EPIPHANY DONUTS NEWTOWN LIMITED First Plaintiff
AND	EPIPHANY DONUTS WAIKANAE LIMITED Second Plaintiff
AND	IVY CRISELDA TAN-AZUCENA Third Plaintiff
AND	OTTO AZUCENA Fourth Plaintiff
AND	VISHAL SATIJA Defendant

Hearing:	On the papers
Appearances:	O Azucena, agent for first to third plaintiffs and on his own behalf as fourth plaintiff J Wood, advocate for defendant
Judgment:	5 December 2025

JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

Introduction

[1] The plaintiffs have challenged a costs determination of the Employment Relations Authority.[1] In order to understand the grounds for the challenge, and the

[1] *Satija v Epiphany Donuts Newtown Ltd* [2024] NZERA 727.

defendant's opposition to it, it is necessary to set out the background to the disagreement between the parties and the litigation that followed.

Background

[2] The defendant was employed by the first and second plaintiffs and commenced work on 17 March 2020. Mr Azucena (the fourth plaintiff) was the manager of the business, and his wife (the third plaintiff) was a director. During their employment the defendant paid the third and fourth plaintiffs various sums of money totalling $45,000. The defendant resigned on 20 December 2020 and sought repayment of that amount. An agreement (which was titled "loan agreement") was subsequently entered into, recording that the money would be repaid to the defendant. The loan agreement referred to legal fees. The parties were invited to make further submissions on the legal fees clause, which I will come to later.

[3] The plaintiffs did not make payment under the agreement and the defendant sought orders from the Authority.

[4] The Authority determined that the agreement was a binding, full and final settlement between the defendant and the first, second and fourth plaintiffs, designed to resolve all issues relating to the defendant's employment.[2] The Authority found that the first, second and fourth plaintiffs were jointly and severally liable for meeting the obligations under the agreement. The Authority went on to find that the defendant had received a payment of $10,000 on 19 November 2021 and a further payment of $100 on a later date, leaving $34,900 remaining due.[3]

[5] The Authority ordered the first, second and fourth plaintiffs to pay the defendant the outstanding money within 28 days of its determination, together with interest.[4] Costs were reserved. The parties were unable to agree costs and the Authority later issued a costs determination on 5 December 2024.[5] The Authority

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2 At [17].
3 At [18].
4 At [22]-[23].
5 *Satija*, above n 1.

ordered the first, second and fourth plaintiffs to pay the defendant the sum of $4,500 as a contribution to costs to be paid within 28 days of the date of the determination.[6]

[6] The first, second and fourth plaintiffs filed a challenge to the Authority's costs determination. It is that determination which is before the Court; the plaintiffs did not pursue a challenge to the substantive determination.

[7] The defendant subsequently applied to the Authority for a compliance order in respect of the non-payment. The Authority made such an order on 1 July 2025, ordering payment of the amounts set out in both the Authority's substantive and costs determinations within a period of 28 days of the date of that determination.[7]

[8] The defendant says that the plaintiffs have failed to comply with the Authority's compliance orders and have sought further orders from the Court in respect of that alleged non-compliance. The plaintiffs have filed a statement of defence to that claim, which remains before the Court.

The basis for the challenge

[9] The plaintiffs do not take issue with the fact that there was an agreement to pay, or that they are obliged to repay the defendant. They say that they are actively engaged in trying to arrange payment and have offered to pay the defendant via a structured repayment plan. They do, however, take issue with the Authority's order of costs against them. The reasons for that can be summarised as follows.

[10] First, it is submitted that the imposition of costs would be unjust given the procedural history of the matter before the Authority. That is essentially because of what is called a "reversal" of the defendant's initial complaint in that forum, which caused the plaintiffs to incur unnecessary legal costs. It is said that the Authority ultimately agreed with the plaintiffs' "long standing" position in its substantive determination. Second, it is said that the Authority lacked jurisdiction to deal with costs as the issue is one of enforcement, which is a matter for the ordinary Courts.

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6 At [12].
7 *Satija v Epiphany Donuts Newtown Ltd* [2025] NZERA 383.

[11] The plaintiffs also submit that they should not be required to pay costs because they have acted in good faith throughout and have sought to resolve matters; that there are issues of genuine concern and public interest in respect of the costs issue and imposing costs would unjustly penalise the plaintiffs' pursuit of justice. The plaintiffs seek compensation for the various alleged harassing conduct by the defendant; reimbursement of expenses in respect of the defendant allegedly not returning documents; and costs.

The defendant's position

[12] The defendant says that it was the plaintiffs' conduct that led to unnecessary time being spent in the Authority's investigation and that while the defendant did amend the claim, it was not the amendment which was responsible for the plaintiffs' substantial legal costs. The defendant says that they were the successful party and are accordingly entitled to costs. It is further said that while reference is made to the plaintiffs acting in good faith and making offers to enter repayment plans and the like, the amount owed (which the plaintiffs do not dispute) has been outstanding since November 2021. The allegations relating to harassing conduct and retention of company property are mostly denied.

Approach

[13] On a challenge such as this the Court stands in the shoes of the Authority.[8] The Authority has a broad discretion as to costs, as sch 2 cl 15 of the Employment Relations Act 2000 makes clear. When exercising its discretion, the Authority must act on a principled basis.

[14] The Authority has adopted general principles when dealing with costs, which have previously been approved by a full Court of the Employment Court. While it may be said to be open to the Authority to adopt a costs-lie-where-they-fall approach to costs, it has not done so. Rather, the Authority generally applies a costs-follow-the-event approach, consistently with courts of ordinary jurisdiction. That means that the

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8 *PBO Ltd (formerly Surh Security Ltd) v Da Cruz* [2025] ERNZ 808 (EmpC).

successful party will generally be entitled to a contribution to their costs in the Authority.

[15] The Authority has also adopted a tariff approach to costs which it generally applies.[9] The tariff involves $4,500 for the first day of an investigation meeting and $3,500 for each subsequent day. A review of Authority costs determinations suggests that no allowance is usually made for submissions filed after the investigation meeting.

[16] While the Authority may be guided by its usual approach to costs, it must not apply that as a rigid rule. Each case must be assessed on its own merits. Aggravating conduct may, for example, lead to a higher contribution to costs; inability to pay may lead to a lower contribution to costs.

Analysis

[17] I start with the plaintiffs' submission that there is a jurisdictional barrier to an award of costs in the defendant's favour.

[18] As I understand the argument, it is said that enforcement of the agreement is a matter that is within the jurisdiction of the ordinary courts, not the Authority and not the Court on a challenge. The difficulty with that argument is that the Authority's substantive determination (that there was a full and final settlement between the parties that was within the Authority's jurisdiction) was not challenged and the Court is now dealing with costs on the Authority's substantive investigation. There is clearly jurisdiction for the Authority to order costs and for the Court to decide a challenge against the costs determination.

[19] The defendant was the successful party in the Authority, as the Authority's determination (which was not challenged) makes plain. Ordinarily, the defendant would be entitled to costs. The plaintiffs say that no costs should be ordered, or (if they are), they should be ordered against the defendant because of the way in which the litigation has been conducted.

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[9] Employment Relations Authority "Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi" (February 2024) at 5.

[20] It is important to note that an award of costs is not designed to punish a party; rather it is designed to contribute to the costs incurred by the successful party.[10] It follows that the plaintiffs' submission that they "acted in good faith throughout the Authority's process, seeking resolution and accountability without vexatious intent or undue delay" is not relevant to whether the defendant, as the successful party, should be awarded a contribution to their costs.[11] Concerns about harassing conduct and retention of company documentation are also not relevant to an assessment of costs in this case. Those matters (which are denied) arose after the Authority's substantive determination and are not sufficiently connected to the conduct of the investigation in the Authority.

[21] Submissions directed at wasted costs, and whether the steps taken by either party unnecessarily increased costs, are however relevant to the quantum of costs that might appropriately be ordered. The defendant says that the Authority's costs award should be increased to reflect the wasted costs that they incurred because of the way in which the plaintiffs allegedly responded to the claim; the plaintiffs say that the defendant unnecessarily increased costs and that this factor should be reflected in the ultimate sum ordered.

[22] The defendant amended their claim, as the plaintiffs point out. The plaintiffs say that they incurred legal costs of over $18,000 as a result of the amendment, although no supporting information is provided. The amount seems very high, but the point is that if the amendment did result in legal fees of $18,000 that is not something that is reasonably visited on the defendant; is a matter which may be taken up elsewhere; and does not warrant an adjustment to costs. Amendments to documents in the Authority are not uncommon and I do not see this factor (in light of the nature and timing of the amendment) as justifying an uplift.

[23] A review of the material before the Court reflects that there were a number of delays and other issues that made the investigation less than straightforward. Delays and complexity tend to increase costs, and it may be appropriate in some cases to

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10 *Da Cruz*, above n 8, at [44].

11 The defendant's contention that these statements are untrue and self-serving do not need to be resolved.

reflect that in a reduction or uplift. If I was satisfied that the plaintiffs were responsible for unnecessarily increased costs, I would be inclined to increase the contribution to costs against them; if I was satisfied that the defendant was responsible for unnecessarily increased costs, I would be inclined to decrease the contribution to costs made in their favour. It can reasonably be inferred that both sides increased costs, and I am not satisfied that it would be just or equitable to make an adjustment either way.

[24] The defendant was the successful party and costs should follow the event. The circumstances are such that the usual approach to costs in the Authority should apply. As the Authority noted in its costs determination, the investigation meeting took effectively one day.[12] The investigation briefly commenced on 29 February 2024, but it was adjourned and reconvened on 1 July 2024; that meeting consumed most of the day. I do not understand either party to take issue with this. The daily rate is $4,500. I am not satisfied that there should be an increase to reflect the preparation of submissions filed after the investigation meeting, having regard to the way in which the daily rate is calculated (which I have referred to above) and what was reasonably necessary in terms of the preparation of submissions in this case.

[25] The plaintiffs' request to be compensated for the alleged harassing conduct by the defendant and reimbursement of expenses said to have been incurred in respect of the defendant allegedly not returning documents, are not issues that this Court can deal with on the challenge; the claim for costs is not made out. These claims are dismissed.

[26] I now turn to the "legal fees" clause. The agreement between the parties, which the Authority enforced in its substantive determination, contained a "Legal Fees" clause, which provided:

> Both parties agree that, in the event of a court dispute regarding this loan agreement, the prevailing party's full legal costs, including attorneys' fees, shall be reimbursed by the opposite party.

[27] The Authority's costs determination did not address this clause in its costs determination. In the circumstances, I invited the parties to make further submissions

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[12] *Satija*, above n 1, at [7].

on whether the clause has any impact on the Court's determination of costs on the challenge.

[28] In their further submissions, the defendant explained that it did not seek to rely on the clause because of uncertainty around whether it would apply to representation by an advocate rather than a lawyer, as well as whether proceedings in the Authority would be considered a "court dispute". I take it from the defendant's submissions that they do not seek to rely on the clause for the purposes of this challenge and it does not need to be considered further.

Conclusion

[29] The first, second and fourth plaintiffs are jointly and severally ordered to pay to the defendant a contribution to costs of $4,500. The plaintiffs must pay the defendant the sum of $4,500 within 14 days of the date of this judgment.

[30] The challenge is dismissed, and the Authority's costs order is confirmed.

[31] The defendant is entitled to costs on this challenge. This was a short challenge dealt with on the papers. Having regard to what was reasonably required to pursue the application I set costs at $1,000. That sum is also to be paid within 14 days of the date of this judgment.

Christina Inglis
Chief Judge

Judgment signed at 3.45 pm on 5 December 2025