

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2024] NZERA 42  
3208699

BETWEEN JOSHUA GERRARD  
Applicant

AND NEC BOYD HOLDINGS  
LIMITED  
Respondent

Member of Authority: Rowan Anderson

Representatives: Robert Morgan, advocate for the Applicant  
Michael McAleer, advocate for the Respondent

Investigation Meeting: On the papers

Submissions and further information: 14 December 2023 from the Applicant  
No submissions from the Respondent

Determination: 26 January 2024

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

**Background and submissions**

[1] On 11 December 2023 the Authority issued a determination<sup>1</sup> in which I found that Joshua Gerrard was an employee rather than an independent contractor, and that he was unjustifiably dismissed and entitled to compensation.

[2] Costs were reserved. The parties have not been able to agree on costs, and Mr Gerrard now asks the Authority for orders as to the costs he incurred in pursuing her claims against NEC Boyd Holdings Limited (NEC).

[3] Mr Gerrard seeks a total contribution towards its costs based on the daily tariff approach adopted by the Authority for a one-day investigation meeting, including an uplift on the basis that a *Calderbank* offer said to have been made on 5 April 2023.

---

<sup>1</sup> *Joshua Gerrard v NEC Boyd Holdings Limited* [2023] NZERA 737.

[4] No submissions were received from NEC despite the provision of an extended timeframe for the provision of the same.

### **Costs principles**

[5] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.<sup>2</sup>

[6] The principles as to the exercise of that discretion are well known, including that costs will generally follow the event, that awards will be modest, that Calderbank offers may be taken into account, and that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct.<sup>3</sup>

[7] The daily tariff is usually taken as a starting point,<sup>4</sup> although not used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.

### **Consideration**

[8] Mr Gerrard was successful in pursuing his claims and it is appropriate that costs follow the event.

[9] The substantive proceeding involved the setting down of a one-day investigation meeting. The investigation meeting concluded at approximately 3.00pm. I consider the appropriate starting point for daily tariff approach would see a contribution of \$4,500 for the first, and only, day.

[10] Mr Gerrard submitted that an offer of settlement was made on 5 April 2023 and rejected by NEC. I consider it unnecessary to consider the settlement offer given the sum that has been sought in relation to costs does not exceed the tariff starting point as I have determined it.

---

<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>3</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 at [44] to [46].

<sup>4</sup> Employment Relations Authority Practice Direction, August 2023, <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>

## **Orders**

[11] I order NEC Boyd Holdings Limited to pay Mr Gerrard, within 28 days, the sum of \$4,500 as a contribution towards the costs he incurred in pursuing his claims.

Rowan Anderson  
Member of the Employment Relations Authority