

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 566
3302700

BETWEEN CAROL HODGSON
Applicant

AND TITUS TRANSPORT
LIMITED
Respondent

Member of Authority: Nicola Craig

Representatives: Allan Halse, advocate for the applicant
June Hardacre and Rob McStay, counsel for the
respondent

Submissions: 4 and 26 August 2025 from the applicant
18 August 2025 from the respondent

Date: 12 September 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Authority issued a determination about Carol Hodgson's employment with Titus Transport Limited (Titus).¹ Ms Hodgson established unjustified actions to her disadvantage grievances but not that she was constructively dismissed.

[2] The parties were encouraged to resolve any question of costs between themselves but have been unable to do so. Submissions and other information were received from the parties.

Ms Hodgson's costs application

[3] Submissions for Ms Hodgson seek costs of \$15,000. Reference is made to

¹ *Carol Hodgson v Titus Transport Ltd* [2025] NZERA 42.

actual costs of \$21,435.97 including GST being incurred, without reference to invoices. The total is split into \$8,685.97 referenced to costs incurred on the statement of problem, evidence and investigation meeting preparation, with the hearing including closing submissions incurring costs of \$13,250.

[4] A contribution to costs based on the Authority's notional daily tariff is sought, with a submission that there is no reason to depart from the usual tariff. The investigation meeting is described as running for 3.5 days, the tariff for which is \$13,250.

[5] A further contribution to costs is sought in respect of “the Authority's determination” in relation to the section 221 issue, striking out Clinton Rolfe as the respondent.² Ms Hodgson's position is that the determination of the section 221 matter was entirely unnecessary.

[6] The Authority sought a copy of a *Calderbank* offer made on Ms Hodgson's behalf, referred to in correspondence. Two offers were sent from before the matter was lodged in the Authority. Both seek substantially larger amounts than were awarded in the Authority's determination of Ms Hodgson's issues.

Titus's submissions

[7] Titus seeks an order that costs lie where they fall on the grounds below.

The applicant was not wholly successful

[8] Titus submits that in the determination the Authority ordered Titus to pay Ms Hodgson a modest sum of \$5,000 compensation for humiliation, loss of dignity and injury to feelings. This has been paid.

[9] Ms Hodgson raised 13 separate claims against Titus in her statement of problem and was only successful in two unjustified disadvantage claims, assessed at 15% of her claims against Titus. The remedies sought by her are said to amount to \$205,800 over the 13 claims, some not even specifying a quantification. Titus submits that the lost wages claims were misleading as Ms Hodgson was stood down on full pay, suffered no financial disadvantage and did not experience any break from employment, there being

² Employment Relations Act 2000 (the Act), s221.

only a minimal difference in wage rates with her new employer.

[10] Titus incurred a similar significant amount of time and legal fees, more than \$60,000, to defend Ms Hodgson's various claims through the investigation meeting before the Authority.

Rejection of a reasonable Calderbank offer

[11] On 9 December 2024 Titus offered Ms Hodgson a sum of \$5,000 - comprising \$3,500 compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act) and \$1,500 as a contribution to her advocate's fees, on a Calderbank basis in full and final settlement of her claim against it. That offer was rejected by her advocate on 11 December 2024, with an indication the amount was seen as too insignificant.

[12] It is pointed out that Ms Hodgson's costs submissions indicate at least \$13,250 of the costs incurred relate to the hearing itself, including closing submissions. If she had accepted the offer she would be in a better financial position than she is today due to increased fees incurred preparing for, and attending, three hearing days and written/oral submissions.

Conduct unnecessarily increasing Titus's costs

[13] The investigation meeting was initially scheduled for two days on 17 and 18 December 2024. A witness statement for Ms Hodgson had been filed on 13 November 2024 but at the start of the investigation meeting on 17 December 2024, Ms Hodgson's representative filed another version of the witness statement stating that he had inadvertently filed a different version earlier. I note Ms Hodgson was willing to confirm the content of both documents. Ms Hodgson also presented for the first time information from two diaries she wanted the Authority to consider.

[14] These documents had not been provided to Titus in advance and its representatives did not have the opportunity to prepare to cross-examine Ms Hodgson on them, or brief further witnesses in response to specific issues that arose in the diaries.

[15] As a result, allowing for discussion periods and following the Authority Member's questions to Ms Hodgson, which were limited to the superseded earlier witness statement, the meeting had to be adjourned part heard fairly late on the first day.

[16] Titus indicates it was required to incur additional costs and file three additional witness statements (including from two new witnesses) to respond to Ms Hodgson's new statement and the diaries.

[17] It submits that failing to provide the documents to the Authority and Titus with sufficient notice before the investigation meeting, increase the duration of the meeting by at least one day, and unnecessarily increased its costs as it was required to brief additional witnesses to respond to the documents.

Identification of the respondent

[18] Titus submits that it was at all times Ms Hodgson's employer and the correct respondent to her claim. She had initially incorrectly filed her statement of problem against the company's director Clinton Rolfe. This issue was dealt with in the respondent's statement in reply and confirmed in Directions of the Authority, which Ms Hodgson's representative agreed to. No determination was required on that point. Titus submits that no additional costs were incurred because of the section 221 issue.

The Authority's cost principles

[19] The Authority has the power to award costs.³ This power is discretionary but must be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* principles guiding the Authority's approach to costs are outlined including:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction
- Equity and good conscience is to be considered on a case-by-case basis
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award
- Costs generally follow the event
- Awards will be modest
- Frequently costs are based on a notional daily tariff.⁴

³ The Act, Schedule 2, cl 15.

⁴ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

Application

[20] I accept that three and a half days is the appropriate initial tariff assessment – totalling \$13,250.

[21] I see where Titus's description of 13 issues arises from in the statement of problem however the Authority's description of the issues resulted in a somewhat shorter list. Areas for consideration were essentially captured in three groups of circumstances – regarding the May 2023 email, dispatch duties and the August 2023 text. An earlier assessment of actual losses may have assisted.

[22] A *Calderbank* offer may be relevant to costs assessments if it is clear and transparent and made in sufficient time to allow a party to consider it and take advice on it if necessary. Traditionally they applied to offers made by respondents or defendants. Noting here the offers made on Ms Hodgson's behalf were for substantially more than she was ultimately awarded but if accepted Titus would have saved a substantial amount of money on its costs.

[23] The offer from Titus was made one week before the first day of the December 2024 investigation meeting. The amount of compensation offered was around a third less than the amount awarded by the Authority although once a contribution to costs was added, the total package amounted to the sum which the Authority ordered by way of compensation. A relatively short period for acceptance of the offer was given but Ms Hodgson's representative is an experienced advocate and was able to provide a response well before the expiry of that time.

[24] By the time Titus's offer was made, subject to the point about the additional witness statement, not inconsiderable work had been done on Ms Hodgson's behalf – a statement of problem lodged, documents collected, case management conference attended and a witness statement prepared. Ms Hodgson's costs prior to the investigation meeting are described as being \$8,685.97 although some of the final preparation before the meeting may well not have been completed by that time.

[25] Ms Hodgson could have avoided additional costs at that point if she had accepted the offer.

[26] The production of Ms Hodgson's additional witness statement and diaries at the start of the investigation meeting did add by some degree to the time required and should be considered.

[27] Resolution by agreement of the issue regarding the initial identification of Mr Rolfe as respondent instead of Titus added very little to costs.

[28] Weighing all of the above, I consider Ms Hodgson should be awarded a modest amount of costs and be recompensed for the Authority's filing fee.

Orders

[29] Titus Transport Ltd is to pay Carol Hodgson within 21 days \$4,500 as a contribution to her costs along with \$71.55 for the Authority's filing fee.

Nicola Craig
Member of the Employment Relations Authority