

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 833  
3326820

BETWEEN      KIM KNIGHT  
                         Applicant  
  
A N D            ASUREQUALITY LIMITED  
                         Respondent

Member of Authority:      David G Beck  
  
Representatives:            Evie Hope, counsel for the Applicant  
   Zachary Pentecost and Phillis Goredema counsel for the  
   Respondent  
  
Investigation Meeting:      On the papers  
  
Submissions Received:      5 September 2025 from the Applicant  
   5 September 2025 from the Respondent  
  
Date of Determination:      19 December 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Following an investigation meeting held on 2 September 2025 and thereafter timetabled submissions, the Authority in a Determination of 3 November 2025, held that Kim Knight was unjustifiably disadvantaged and suffered detriment due to how AsureQuality Limited (Asure) effected a redundancy process that led to Ms Knight's position being disestablished. Asure was ordered to pay Ms Knight \$25,000 compensation pursuant to section 123 (1)(c)(i) of the Employment Relations Act 2000 (the Act).<sup>1</sup> Costs were reserved and despite a direction to explore agreement between themselves none was forthcoming.

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<sup>1</sup> *Kim Knight v AsureQuality Limited* [2025] NZERA 704.

## **The application for costs and response.**

[2] In a memorandum of 17 November 2025, Ms Knight's counsel sought indemnity costs of \$14,183.47, accumulated after a rejected Calderbank offer of 15 May 2025.

[3] Asure's counsel provided a costs submission suggesting costs lie where they fall on the basis Ms Knight was only partially successful in her personal grievance and in the alternative, an award be limited to the notional daily tariff without an uplift. On the rejected Calderbank offer Asure's counsel asserted it lacked relevance as it was for a settlement amount more than that awarded by the Authority (but only when costs were taken into account).

## **Assessment**

### *The dilemma of mixed success*

[4] Judge Smith in *William Coomer v JA McCallum and Son Limited* noted (omitting citations):

Where both parties have had a measure of success determining which of them is entitled to costs is often a nuanced assessment of competing considerations. In *Weaver*, the Court said that the appellants were the only party to have succeeded by any 'realistic appraisal'. That conclusion followed because they obtained a monetary award .... It was immaterial that they had not succeeded to the full extent of their claim because' ... success on more limited terms is still success. <sup>2</sup>

[5] To assess costs where one party has a degree of mixed success can sometimes be problematic. <sup>3</sup> It is arguable that Ms Knight's success was partial. However, standing back and examining the main elements of the claims and contrasting them with cases of partial success on substantive matters, Ms Knight established she was unjustifiably disadvantaged and obtained an above moderate award of compensation for the distress of this.

[6] In the normal course of events this was a significantly successful outcome even though Ms Knight did not establish Asure's decision was unwarranted, and no award of lost wages was made. I find this does not call for a particularly nuanced assessment as it is

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<sup>2</sup> *William Coomer v JA McCallum and Son Limited* [2017] NZEmpC at [37] – [43].

<sup>3</sup> Op cit at [37]

difficult to consider the extent of the claimed partial success for Asure given the Authority found that Ms Knight was the subject of ongoing unreasonable and unjustified actions.

[7] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000.

[8] A starting point is that costs normally follow the event and as Ms Knight was predominantly successful in her personal grievance and obtained a significant compensatory remedy, an award of costs is appropriate.

#### *Applying the daily rate*

[9] The Authority's approach is to apply a notional daily rate and only adjust that rate if persuaded that circumstances or other factors require an upward or downward adjustment.<sup>4</sup> The current daily rate is \$4,500 for the first full day of an investigation meeting.

#### *Adjusting the daily rate*

[10] The investigation meeting was concluded in a day and submissions were timetabled thereafter given the relative complexity of the evidence and issues in dispute. I would normally consider applying the normal daily rate but accept an upward adjustment is warranted. I, however, do not see any unusual elements or unique features of Mr Knight's situation that would justify an award of full indemnity costs (discussed below).

#### **Impact of settlement offer.**

[11] The making of an offer of settlement in the form of a *Calderbank* offer (without prejudice except as to costs) is at times a relevant factor to be weighed when considering costs where such does not better the award made by the Authority. Here, Ms Knight had attended mediation and filed an application with the Authority (on 24 September 2024) when a significant without prejudice settlement was offered by Asure in May 2025 (\$10,000 net) that did not separately take account of Ms Knight's costs incurred to date.

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<sup>4</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)

[12] In response on a Calderbank basis, Ms Knight made an offer of \$25,000 compensation and \$8,000 plus GST as a cost contribution. Asure rejected this offer without a further improved counteroffer.

[13] Whilst generally the Authority has a low-level jurisdiction, hence a focus on a notional daily rate for awarding costs, there is authority to suggest a ‘steely’ approach to *Calderbank* offers is sometimes required in the broader public interest.<sup>5</sup> The Employment Court has held that a *Calderbank* offer sometimes leads to an uplift in costs for the successful party seeking such to encourage early settlement and the Authority has likewise approached costs in a similar vein.<sup>6</sup> I intend to positively consider the Calderbank offer made by Ms Knight. It was offered to settle prior to the Authority investigation and before exchanges of evidential statements and a fair estimate of the eventual outcome. Ms Knight then succeeded in litigation that Asure could have reasonably and pragmatically avoided.

[14] I find a modest uplift in the notional daily rate is warranted in all the circumstances. I consider it equitable to award Ms Knight an enhanced daily rate of \$5,500 to take account of the rejected settlement offer.

### **Order**

[15] AsureQuality Limited is to pay Kim Knight a contribution to her legal costs in the amount of \$5,500 net and to reimburse Ms Knight the Authority filing fee of \$71.55, within 28 days of this determination being issued.

David G Beck  
Member of the Employment Relations Authority

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<sup>5</sup> *Bluestar Print Group (NZ) Ltd v Mitchell* [2010] NZCA 385.

<sup>6</sup> *Stevens v Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 137 at [24].