

**NOTE: This determination
contains an order prohibiting
publication of certain
information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 180
3264379

BETWEEN

LISA KNOFF
Applicant

AND

PAULA MORRIS
Respondent

Member of Authority: Natasha Szeto

Representatives: Hayley Johnson and Alex Kersjes, advocates for the
Applicant
Beverley Edwards, counsel for the Respondent

Submissions received: 19 December 2024 from the Respondent and
22 January 2025 from the Applicant

Date: 28 March 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 13 November 2024, I issued a determination¹ in which Ms Knoff was found not to have been unjustifiably dismissed, in that Ms Morris' decision to make Ms Knoff's role redundant was made for genuine business reasons and met the notice and consultation requirements.

¹ *Lisa Knoff v Paula Morris* [2024] NZERA 670.

[2] However, I also found that Ms Knoff was a permanent part-time employee and not a casual employee, and she was found to be owed wage arrears for an underpayment during her employment, a shortfall when she was available for work, and a notice period. A non-publication order was made for Ms Morris' son, which is continued in this determination.²

[3] In the determination, I stated that as Ms Knoff was successful on some of her wage arrears claims but not her personal grievance claim, it may be appropriate that costs lie.³ I also referred to the Authority's usual practice of applying the daily tariff to determine costs and the parties were encouraged to resolve any issue of costs between them. They have been unable to do so, and this determination accordingly resolves the issue of costs.

Parties' submissions

[4] Ms Morris lodged and served a memorandum in respect of costs on 19 December 2024. She says the Authority found substantially in her favour, and accordingly, she was successful in obtaining a substantive outcome. Ms Morris asks for the Authority to order Ms Knoff to pay her actual and reasonable costs of \$12,925.18 incurred from after mediation to the date of the determination. She has provided an invoice breakdown table in support. While Ms Morris acknowledges the starting point would usually be a full day's costs at the tariff amount of \$4,500.00, she says this should be uplifted because Ms Knoff rejected numerous reasonable settlement offers, did not comply with the Authority's directions around lodging statements, and did not respond at all to Ms Morris' last settlement offer made after the investigation meeting which resulted in Ms Morris incurring further costs to draft closing submissions.

[5] Ms Knoff filed a reply costs memorandum on 22 January 2025. She says she was partially successful in her claim and is therefore entitled to costs. Ms Knoff says because the investigation meeting took three quarters of a day, the starting point for costs on a tariff basis is \$3,375.00. She says the *Calderbank* (by which I understand her to mean the last offer from Ms Morris) was not valid because it did not indicate the time it was open for, or indicate that Ms Morris would apply for an uplift. Ms Knoff says she incurred costs of \$13,692.16 and disbursements of \$71.56 and has provided a

² Above n1 at [11] and [107].

³ Above n1 at [108].

tax invoice in support. She says a fair and reasonable amount to award her would be \$1,000.00 due to her mixed success.

Analysis

[6] The Authority has clear statutory power to order such costs and expenses to be paid as the Authority thinks reasonable.⁴ Costs are awarded at the Authority's discretion.⁵ The principle that costs follow the event is well-recognised by the Authority and courts.⁶

[7] In this case, there was mixed success because Ms Knoff was not successful on her personal grievance claim and some of her wage arrears claims, but was successful on others. It is not a straight-forward matter to separate the time spent in investigating the successful claims from the time spent investigating the unsuccessful allegations in this matter. This is especially so because a significant amount of time was spent investigating Ms Knoff's employment status to determine her entitlements. However, standing back to consider the matter objectively, Ms Knoff was the successful party because I found her to be a permanent part-time employee and made orders in her favour which she was required to bring to the Authority to determine. Therefore Ms Knoff is eligible for a costs award from Ms Morris.

[8] The Authority has adopted a daily tariff approach as the starting point for considering costs, which is well known. The current daily tariff is \$4,500.00 for the first day of hearing.⁷ The parties can expect the Authority to adhere to the approach of applying the daily tariff, unless there is good reason to depart from it. In this case, the investigation meeting ran for a full day, and I proceed on the basis that the appropriate starting point is \$4,500.00.

[9] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*⁸ as confirmed in *Fagotti v Acme and Co Limited*⁹.

⁴ Employment Relations Act 2000, Schedule 2, clause 15.

⁵ *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622.

⁶ *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [48].

⁷ Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi (February 2024) at: <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>

⁸ [2005] 1 ERNZ 808.

⁹ [2015] NZEmpC 135 at 114.

[10] It is a principle set out in *Da Cruz* that costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct. The financial situation of the party paying costs can be a relevant factor to take into account. Awards made should be modest, and consistent with the Authority's equity and good conscience jurisdiction. A robust approach is to be adopted in relation to *Calderbank* offers. The Employment Court has noted that such an approach is "consistent with the public interest in encouraging the acceptance of reasonable settlement offers and avoiding unnecessary litigation".¹⁰

[11] I have seen the offers made between the parties and I consider them to be a neutral factor in my assessment. This is because the communications show the parties made genuine and reasonable attempts to resolve matters between them up until 25 October 2023 when it appears that Ms Morris either did not respond to, or declined, an offer put forward by Ms Knoff. Ms Knoff lodged her statement of problem in the Authority the following month. Ms Morris made an offer to Ms Knoff on 31 July 2024 after the investigation meeting had concluded, which cannot have been made in order to avoid the litigation. While Ms Morris submits Ms Knoff's rejection of "reasonable" settlement offers should be taken into account, the communications provided to the Authority do not support the submission that Ms Knoff unreasonably rejected a reasonable *Calderbank* offer.

[12] The fact that Ms Knoff was not successful on her personal grievance claim and some of her wage arrears claims should be taken into account to reduce (or offset) an otherwise appropriate costs award. Given the starting point of one day's tariff costs, and accepting the mixed success, it is appropriate to reduce the tariff to \$1,000.00 as Ms Knoff submits. Stepping back to look at matters overall and considering parity with other cases, an award of \$1,000.00 as a contribution to Ms Knoff's costs actually and reasonably incurred represents a modest and appropriate costs award in the circumstances. Ms Knoff is also to be reimbursed the Authority's application fee.

¹⁰ *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4.

Orders

[13] For the reasons set out above, I order Paula Morris to pay Lisa Knoff within 28 days of the date of this determination:

- (a) The sum of \$1,000.00 as a contribution to her costs.
- (b) The sum of \$71.55 as a disbursement, being the Authority's filing fee.

Natasha Szeto
Member of the Employment Relations Authority