

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2025] NZERA 173  
3262979

BETWEEN

JOSHUA KNOX  
Applicant

AND

RECRUIT IT GROUP  
LIMITED  
Respondent

Member of Authority: Davinnia Tan

Representatives: Paul Matthews, advocate for the Applicant  
John Dustow, advocate for the Respondent

Investigation Meeting: On the papers

Submissions received: 17 January 2025 from Applicant  
29 January 2025 from Respondent

Determination: 25 March 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 8 January 2025, the Authority issued a determination in this matter, finding in favour of the applicant's claim of unjustifiable dismissal, and awarded the applicant \$18,000.00 in compensation and \$2,884.62 lost wages.<sup>1</sup>

[2] In that determination, the parties were encouraged to resolve any issue of costs between them, and the Authority made reference to its usual practice of applying the daily tariff to determine costs.

[3] The parties have not been able to resolve costs between themselves, and have filed memoranda accordingly.

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<sup>1</sup> *Joshua Knox v Recruit IT Group Limited* [2025] NZERA 4.

## Submissions

[4] As the successful party, the applicant seeks the sum of \$7291.48 and submits the following:

- a. \$4,500.00 as the starting point notwithstanding that the investigation meeting concluded in the early afternoon because:
  - i. Full written submissions were provided
  - ii. Further attendance was required due to further documentation needing to be provided by the Respondent which extended proceedings due to the time needed to follow up;
  - iii. These factors led to the equivalent of one full day.
- b. An uplift of \$2,500.00 on the basis that two Calderbank offers were made:
  - i. The first offer was made in March 2024 for \$18,000.00 and costs (less than the award, and had been rejected by the Respondent 42 minutes after the offer was made). The applicant submits that substantial costs would have been saved had that offer been accepted;
  - ii. The second offer was made on 11 November 2024 for \$12,000.00 and costs. While this offer was made closer to the investigation meeting, the Respondent had ample time to consider it as it made a counter offer. The applicant considers that considerable costs could have been saved had its second offer been accepted.
- c. Reimbursement of \$219.93 for attendance by the applicant's advocate;  
and
- d. \$71.55 for the Authority's filing fee.

[5] The respondent considers that the appropriate award for costs is \$2,250.00 and \$71.55 (filing fee) and submits the following:

- a. The investigation meeting took less than half a day to just before 1pm. On that basis, the normal course of action by the Authority is to apply a half day rate of \$2,500.
- b. The delay and the requirement for written submissions was caused by the Applicant requesting Board Minutes via cross examination. The

Applicant had every opportunity in the preceding 18 months to ask whether there were any and make the appropriate requests. It submits that there were no requests for disclosure through this process. It is also the Applicant's responsibility to arrange and prepare an agreed bundle of documents, although timetabling for this was not set by the Authority, this was not done by the applicant nonetheless and had this been arranged, the Applicant would have had all the documents and thus all submissions would have been verbal and reading the applicant's written submissions, It is submitted that it would have taken less than 10mins to deliver.

- c. In relation to the Calderbank offers, the March 2024 is equal to or similar to what has been awarded by the Authority and the Calderbank offer one day before the hearing was unreasonable in the circumstances where flights/accommodation were booked and paid for and all the preparation had been completed. The second offer's timelines were unreasonable, and it is submitted the offer should be disregarded.
- d. The Respondent also submits an uplift is not warranted due to the Applicant failing to meet the timetabling schedule, providing his witness statements two weeks past the due date; with the knowledge that the Respondent's advocate would be unavailable over four weeks in June. The respondent submits that it was subject to unnecessary costs and its advocate had to push aside an urgent matter so that he could submit the respondent's response before leaving the country. The Respondent submits that the Applicant's behaviour here would reasonably warrant cancellation of any uplift requested.
- e. Finally, the respondent submits that as demonstrated in the hearing, the Respondent is in serious financial difficulties. Since the hearing, the Wellington Branch has been closed with the loss of four further jobs. The entire company is now being run by two staff members. Any excessive awards would most certainly put severe pressure on the company's viability.

## Principles

[6] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act) which states:

### 15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[7] 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*<sup>2</sup> as confirmed in *Fagotti v Acme and Co Limited*<sup>3</sup>. The principle set out in the above cases is that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment, and as the Court of Appeal has stated several times, a “steely approach” is to be adopted when considering Calderbank offers.<sup>4</sup>

[8] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days.<sup>5</sup>

[9] The daily tariff is usually taken as a starting point, although is not to be used in a rigid manner, with principled adjustments made having regard to the particular characteristics of a case.<sup>6</sup>

## Analysis

[10] Having reviewed parties’ submissions and the legal principles, I have concluded that the applicant is entitled to an award of costs of \$6291.48 for the following reasons.

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<sup>2</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

<sup>3</sup> *Fagotti v Acme and Co Limited* [2015] NZEmpC 135 at 114.

<sup>4</sup> *Health Waikato v Elmsly* [2004] 1 ERNZ 172 (CA) at [53] and *Blue Star Print v David Mitchell* [2010] NZCA 385 at [20].

<sup>5</sup> [Awarding remedies and costs | Employment Relations Authority](#)

<sup>6</sup> <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>

[11] As the investigation meeting took half a day, I consider the appropriate starting point for considering costs in these circumstances is \$2,250.00, in line with the Authority's tariff.<sup>7</sup>

[12] I acknowledge that there was a delay in concluding proceedings to afford the respondent a further opportunity to present additional evidence its sole witness, Mr Leeming, sought to rely on in the investigation meeting to the Authority. I disagree with the respondent's submissions that this delay was the fault of the applicant's by not seeking disclosure of these documents. The applicant cannot seek documents it does not know exist. On the contrary, I find that the delay was caused by the respondent seeking to rely on evidence it failed to present prior to, at, and after the investigation meeting. Furthermore, it was only able to produce some of the evidence Mr Leeming said existed, and not all of it; and when it did provide some of the evidence, the respondent sought to redact some of its content. This process led to additional delays (than had been anticipated at the investigation meeting) so that the issue of redaction could be resolved. Eventually the unredacted documents provided to the Authority by the respondent on 19 November 2024. Parties' written submissions were then provided to the Authority on 22 November 2024.

[13] These issues were not the fault of the applicant's. The responsibility for this delay lies solely with the respondent. Although the applicant submitted that the delay would have led to the equivalent of a full day's investigation meeting, I find that the delay was more likely equivalent to an additional few hours. Accordingly, an uplift of \$1,500.00 is warranted to reflect the unnecessary delay in concluding proceedings.

[14] Two Calderbank offers were made by the applicant. I agree that that first offer of \$18,000.00, made in March 2024, was slightly less than the award<sup>8</sup> and for these reasons, a moderate uplift is appropriate. The second offer of \$12,000.00 was made on 11 November 2024. The applicant has sought an uplift of \$2,500.00 on the basis of the two offers.

[15] I disagree with the respondent that the timing of the second Calderbank offer was unreasonable simply because it was a day before the investigation meeting and/or that flights and accommodation had been booked. I note that the applicant's advocate

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<sup>7</sup> <https://www.era.govt.nz/determinations/awarding-costs-remedies>

<sup>8</sup> *Joshua Knox v Recruit IT Group Limited* [2025] NZERA 4.

does not reside in Wellington and similar preparations would have been put in place. The only persons travelling to the investigation meeting were the parties' representatives. I am unable to see how this is a relevant factor rendering the Calderbank offer "unreasonable". On the contrary, I consider that both Calderbank offers were genuine, meaningful, and would have placed the respondent in a better place than what resulted from the Authority's substantive determination. I find that the respondent unreasonably rejected both offers. Therefore an uplift of \$1,000.00 is appropriate in these circumstances.

[16] The respondent submitted that the applicant's late submission of his witness statements by two weeks caused its advocate to put aside a separate urgent matter so that he could respond to the witness statements in time before going away overseas for 4 weeks. I consider that the respondent could have sought an extension in these circumstances. However I acknowledge the inconvenience and its relevance, therefore warranting a modest deduction of \$250.00 as to costs.

[17] The respondent has submitted that it is continuing to experience financial difficulties and relies on Mr Leeming's testimony at the investigation meeting. However it has not presented verified evidence on the respondent's finances to support its submission on costs. In the absence of supporting evidence, I do not accept the applicant's assertion that a costs award would cause undue hardship. In determining the matter, I must balance these submissions against the factors above and the well-established principle that costs are to be modest.

[18] Reimbursement of \$219.93 has been sought for the applicant's advocate flights to attend the investigation meeting. I decline to award this based on the Authority's usual practice.

## **Orders**

[19] Accordingly I order Recruit IT Group Limited to pay Joshua Knox \$4,500.00 and the filing fee of \$71.55 as a contribution to its legal costs within 28 days of the issuing of this determination.

Davinnia Tan  
Member of the Employment Relations Authority