

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 779  
3289779

BETWEEN                      ALYSE LOGIE  
Applicant

AND                              FLYING KIWI EDUCATION  
LIMITED  
Respondent

Member of Authority:        Jeremy Lynch

Representatives:             Robert Morgan, advocate for the Applicant  
Matthew McGoldrick, counsel for the Respondent

Submissions received:        10 December 2024 from the Applicant  
20 December 2024 from the Respondent

Date of Determination:       24 December 2024

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1]     The Authority issued a determination on 21 November 2024, which found that Alyse Logie had been unjustifiably dismissed by Flying Kiwi Education Limited (Flying Kiwi), and awarded her lost wages and compensation.<sup>1</sup>

[2]     The parties were encouraged to resolve the question of costs but were unable to do so. Ms Logie has applied to the Authority for an award of costs.

**Submissions from the parties**

[3]     Ms Logie and Flying Kiwi both provided submissions on costs in accordance with the Authority's timetable directions.

[4]     For Ms Logie it is submitted:

---

<sup>1</sup> *Alyse Logie v Flying Kiwi Education Limited* [2024] NZERA 695.

- as the successful party she is entitled to an award of costs;
- daily tariff costs were sought on the basis of one full day, plus one part day of hearing time;
- Ms Logie acknowledges that she did not provide a copy of a voice recording until during the course of the investigation meeting. However, she says this only added an additional half hour to the hearing; and
- Ms Logie seeks a costs award of \$5,500.00.

[5] For Flying Kiwi it is submitted:

- as Ms Logie was successful, Flying Kiwi accepts she is entitled to a consideration of costs;
- the second day of the investigation meeting comprised approximately two and a half hours of hearing time;
- the starting point for Ms Logie's claim for costs is therefore \$5,500.00;
- Ms Logie, in not providing voice recording evidence until during the investigation meeting, caused time to be lost;
- it was the actions of Ms Logie in not disclosing the voice recording earlier which necessitated the second (part) day of hearing time;
- Flying Kiwi attempted to resolve the issue of costs with Ms Logie, who indicated initially that she was prepared to accept a contribution of \$5,000.00 towards her costs, but has since declined such an offer to resolve costs; and
- Flying Kiwi submits a costs award of \$5,000.00 is appropriate.

### **Costs principles**

[6] The Authority has power under clause 15 of Schedule 2 of the Employment Relations Act 2000 to award costs. This power is discretionary and must be used in a principled manner.<sup>2</sup> Principles guiding the Authority's approach to costs include:

- the statutory jurisdiction to award costs is consistent with the Authority's equity and good conscious jurisdiction;

---

<sup>2</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808, and *Fagotti v Acme and Co Limited* [2015] NZEmpC 135.

- equity and good conscience are 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 increases costs unnecessarily can be taken into account in inflating or reducing an award;
- costs generally follow the event;
- awards of costs will generally be modest; and
- Frequently, costs are judged against a notional daily tariff.<sup>3</sup>

## **Costs outcome**

### *Starting point*

[7] As Ms Logie was the successful party in the substantive matter, she is entitled to a consideration of costs.

[8] The investigation meeting was scheduled for one day, starting at 9.30 am.

[9] During the course of the investigation meeting, Ms Logie provided an audio recording of a meeting held with Flying Kiwi. Despite the audio recording being referred to in one of Flying Kiwi's witness statements, Ms Logie did not offer to provide a copy of this recording until after the investigation meeting had commenced.

[10] The investigation meeting then needed to be adjourned in order for counsel for Flying Kiwi (and the Authority) to listen to a copy of the recording, and for counsel for Flying Kiwi to take instructions.

[11] The investigation meeting then adjourned for the day at approximately 4.00 pm.

[12] Flying Kiwi advised that, although it had come prepared to present closing submissions at the end of the evidence, the late provision of the audio recording evidence meant it was not in a position to do so.

[13] The Authority convened a further (non-consecutive) investigation meeting day for the purpose of hearing closing submissions. Flying Kiwi provided updated written submissions, which referred to the contents of the audio recording.

---

<sup>3</sup> Employment Relations Authority Te Ratonga Ahumana Taimahi Practice Direction  
<https://www.era.govt.nz/assets/uploads/practice-direction-ofera>.

[14] The second hearing day lasted approximately two and a half hours.

[15] The starting point for a consideration of costs is therefore \$6,250.00, being one full day of the Authority's notional daily tariff of \$4,500.00, and half of the daily rate for a subsequent day (which is half of \$3,500.00) being \$1,750.00.

*Attempts to resolve*

[16] There is no evidence before the Authority of either party making a *Calderbank* offer to resolve the employment relationship problem prior to the investigation meeting.

*Conduct*

[17] Flying Kiwi submits that Ms Logie's actions, in failing to provide the audio recording until during the investigation meeting, had the effect of prolonging the hearing time, and were the cause of a second investigation meeting day being required.

[18] Flying Kiwi submits that had the audio recording been provided ahead of the investigation meeting, it is likely that the matter could have been heard within the scheduled time.

[19] Flying Kiwi submits that Ms Logie's actions were such that the Authority should make a downwards adjustment to the total costs award, reducing tariff costs by \$500.00.

[20] I accept that the late provision of the audio recording was the cause of delay.

[21] There was no reason why the recording could not have been provided earlier. The recording was within Ms Logie's possession and control. I do not accept she took steps reasonably open to her to provide the recording in advance of the hearing, including seeking guidance from the Authority Officer.

[22] Not only did the investigation meeting need to be adjourned so counsel for Flying Kiwi (as well as the Authority) could listen to the recording, the flow on effect was that at the conclusion of the evidence, Flying Kiwi said it was not in a position to make closing submissions. It said it needed to consider the contents of the recording and wished to update its written submissions.

[23] In the circumstances this was reasonable.

[24] The late provision of the recording by Ms Logie did cause delay, and resulted in additional and unnecessary attendances by Flying Kiwi's counsel. Had the recording been provided in advance of the investigation meeting, it is likely that the whole matter, including closing submissions, could have concluded within the allocated hearing time.

*Adjustment to the tariff*

[25] The daily tariff can be adjusted for relevant factors. Stepping back to look at matters overall, it is reasonable in the circumstances of this case that there is a reduction in the costs awarded.

[26] This matter could reasonably have been heard within the scheduled investigation meeting time. Flying Kiwi was not the cause of any delay. As such, I decline to award any tariff costs for the second day of the investigation.

[27] I consider an award of one day at the daily tariff is fair and appropriate. Such an award reflects that Ms Logie was the successful party.

[28] It is also appropriate that Ms Logie is reimbursed for the cost of the fee she paid to lodge her application in the Authority.

**Orders**

[29] Within 28 days of the date of this determination, Flying Kiwi Education Limited is ordered to pay Alyse Logie:

- (a) \$4,500.00 as a contribution to her costs; and
- (b) \$71.55 for the Authority's lodgement fee.

Jeremy Lynch  
Member of the Employment Relations Authority