

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 298

3287659

BETWEEN RYDER McCUTCHAN
Applicant

A N D RL FOODY LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Carren McDonald, advocate for the Applicant
Elisabeth Giles, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 5 May 2025 from the Respondent
19 May 2025 from the Applicant

Date of Determination: 28 May 2025

COST DETERMINATION OF THE AUTHORITY

The Determinations

[1] By way of a determination of 7 April 2025 the Authority dealt with an application by Ryder McCutchan claiming he had been unjustifiably dismissed by RL Foody Limited and the subject of actions causing him unjustified disadvantage. Both claims were unsuccessful and no financial remedies were awarded. However, the Authority found that RL Foody's individual employment agreement pertaining to Mr McCutchan and others, was not compliant with s 67D Employment Relations Act 2000 (the Act) and its description of hours of work

imprecise. This resulted in the Authority making recommendations pursuant to s 123(1)(ca) of the Act that these defects be rectified.¹

[2] The parties were asked to explore resolving costs by agreement but failed to do so. The matter was dealt with on the papers. RL Foody Limited seeks costs as the successful party.

RL Foody's submission

[3] Counsel for RL Foody Limited detailed their client's understanding of the Authority's discretionary jurisdiction and usual daily, tariff-based approach to costs. A suggestion was then made because the outcome of the determination had been wholly successful for their client, costs should follow the event. The notional daily rate of \$4,500 was cited as a starting point for the one-day investigation meeting held on 28 February 2025 and an uplift to \$8,000, on the basis that Mr McCutchan rejected a without prejudice offer made on 13 February 2025 that asked him to abandon his claims and let costs lie where they fell. In addition, RL Foody's counsel sought an additional \$1,150 (inclusive of GST) for the preparation of their cost's memorandum.

Mr McCutchan's submission

[4] The advocate for Mr McCutchan's suggested in the circumstances of the case including the impecuniosity and relative youth of their client a fair approach was to let costs lie where they fall or to award modest costs to be paid by instalments. Evidence of Mr McCutchan's precarious financial situation was provided that included a temporary inability to support himself and live independently that was only mitigated by him living with his father.

Costs principles

[5] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). The discretion it is accepted is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² including that costs are not to be used as a punishment or as a reflection on how either

¹ *Ryder McCutchan v RL Foody Limited* [2025] NZERA 196 at [47] – [50].

² *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.³

Assessment

[6] A general principle for a successful party is that costs should normally ‘follow the event’ and here RL Foody Limited was successful in resisting the claims advanced by Mr McCutchan. However, I am convinced applying an equitable approach that the financial situation of Mr McCutchan warrants a reduction of the daily tariff. In determining this I need to take heed of the interests of the successful party and broader public policy considerations including that RL Foody Limited is a small employer operating a franchise business.

[7] I have also taken account the without prejudice settlement offer but note it was an ordinary offer and had no without prejudice except as to costs stipulation and it provided little pragmatic compromise.

[8] Looking at the totality of the issues and applying the available statutory discretion I consider it appropriate to make a significant reduction in the daily tariff and given Mr McCutchan’s circumstances I consider a \$3,500 reduction to be an appropriate amount and the remainder is to be paid in instalments.

Orders

[9] Ryder McCutchan is to pay RL Foody Limited \$1,000 as a contribution to costs incurred and this amount is to be paid in four equal monthly instalments of \$250 with the first instalment falling due on 1 July 2025 and the remaining three instalments to be paid on the first day of each month thereafter.

David G Beck
Member of the Employment Relations Authority

³ Section 160(2) Employment Relations Act 2000.