

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA  
TAIMAHI ŌTAUTAHI ROHE**

[2025] NZERA 211  
3262039

BETWEEN                      ZAINE OLIVE  
   Applicant  
  
AND                                McLEAN ANGLING  
   LIMITED  
   Respondent

Member of Authority:        Antoinette Baker  
  
Representatives:              Ashleigh Fechny, advocate for the Applicant  
   Paul Mathews, advocate for the Respondent  
  
Submissions received:        26 March 2025 from the Applicant  
   11 April 2025 from the Respondent  
  
Determination:                14 April 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     I issued a Determination on 3 March 2025<sup>1</sup> finding Mr Olive was unjustifiably dismissed by the respondent, MA and ordered it to pay Mr Olive \$20,000.00 in compensation and a further \$9,400.00 in lost wages.<sup>2</sup> The parties were asked to resolve costs. They have been unable to resolve costs.

[2]     Mr Olive seeks an order at the first day Authority tariff <sup>3</sup>, \$4,500.00 with a \$500.00 uplift due to a Calderbank <sup>4</sup> offer to settle for \$20,000.00 compensation and a

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<sup>1</sup> *Olive v McLean Angling Limited* [2025] NZERA 126.

<sup>2</sup> Both remedies available under ss 123 and 128 of the Employment Relations Act 2000.

<sup>3</sup> [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)

<sup>4</sup> A Calderbank offer is an offer made by one party to settle the claim on terms. The offer is marked “without prejudice save as to costs”. The purpose of a Calderbank offer is to not only to attempt to settle a claim but by using the stated words the offering party is reserving the right to bring the offer to the Court's (or in this case the Authority's) attention if the claim is not settled.

payment of costs (\$6,000.00 plus GST). It is submitted that this was less than what was ordered to be paid to Mr Olive in the substantive outcome of the Authority.

[3] MA resists the uplift and in turn seeks a \$500.00 reduction from the \$4,500.00 tariff due to the inclusion in the Calderbank offer of Mr Olive's intention to complain to a professional body in the event the matter had to proceed to the Authority. MA says this was a threat to do something in the event that money was not paid. MA says that had the Calderbank offer been made in 'good faith, the respondent could have given it due consideration.' MA then says in support of its submitted reduction from the tariff that Mr Olive cannot be seen to benefit from an 'unlawful act' which it describes as an 'attempt at coercion and blackmail'.

[4] The Authority has the discretionary power to award costs.<sup>5</sup> A party should receive a reasonable contribution to costs incurred in achieving a successful result. Costs are discretionary, modest, and not a mechanism to punish the other party. The Authority uses a notional daily tariff adjusting up or down as appropriate by considering a liable party's means to pay costs, settlement offers made by either party, extra preparation if a case is complex, and conduct that has unnecessarily increased costs.

[5] There is no dispute that the starting point is \$4,500.00 based on the preparation and appearance at a straight forward matter which this essentially was.

#### *Uplift of \$500.00?*

[6] The Employment Court<sup>6</sup> has observed that while 'Calderbank' offers are "front and centre" for the Court when considering costs, the Authority's discretion is broader and sits within the context of a jurisdiction "intended to be low level, cost effective, readily accessible and non-technical". I do not accept there should be an uplift for the Calderbank offer before me. I accept at the very least the last sentence in that offer includes an inappropriate way of asking another party to consider settlement. I have limited information beyond this and make no comment further except that otherwise the letter appeared to make a reasonable offer to settle in the context of my findings in the substantive matter. I find I am persuaded not to consider an uplift partly because of

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<sup>5</sup> Employment Relations Act 2000, Schedule 2, cl 15.

<sup>6</sup> *Stevens v Hapag-Lloyd (NZ) Ltd* [2015] ERNZ 224 at [94].

how this offer concluded on the young Mr Olive's behalf and also because the offer to settle was for the same compensation I ordered, and it came after the parties had already lodged evidence in preparation for the matter to be investigated.

*Decrease in tariff?*

[7] Again I refer to the above comment by the Employment Court. I am in no position to consider Mr Olive's level of culpability, if any, in what is alleged by MA as serious allegations against him in its response to this costs' application. To the extent that this simple matter of costs involves the Authority's input nothing should be taken as support for any such finding. Accordingly, in my discretion, I do not consider it appropriate to reduce the tariff by \$500.00.

*Outcome*

[8] MA is to pay Mr Olive \$4,500.00 as a contribution to his costs in this matter.

Antoinette Baker  
Member of the Employment Relations Authority