

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 596
3191699

BETWEEN

TANE PUTAANGA
Applicant

AND

MOVE FREIGHT LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Applicant in person
Alastair Espie and Gene Park, counsel for the respondent

Investigation Meeting: On the papers

Submissions Received: 31 July 2025, 15 August 2025 and 17 August 2025 from the
applicant
13 August 2025 from the respondent

Date of Determination: 25 September 2025

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] The resolution of this employment relationship problem involved two investigations; a one-day investigation meeting for a preliminary issue on whether personal grievances were raised in time and then a one-day investigation meeting on the substantive employment

relationship problem.¹ The end result was that Tane Putaanga was successful – ultimately I determined that MOVE Freight Limited had unjustifiably dismissed Mr Putaanga and failed to provide Mr Putaanga with a safe workplace.

[2] Costs for resolving this employment relationship problem have previously been reserved so that the parties could try to agree. The parties have been unable to agree costs and now both parties seek an order for costs.

Application for costs

[3] Mr Putaanga seeks an award of costs of \$25,936. Mr Putaanga calculates this amount as follows:

- (a) \$4,500 for each investigation meeting based on the daily tariff - \$9,000.²
- (b) Attendance at two mediations, totalling six hours - \$570.³
- (c) Attendance on telephone conferences, totalling 10 hours - \$950.
- (d) Administrative time of 55 hours - \$5,225.
- (e) Disbursements covering printing, travel and parking of \$255.
- (f) Disbursements covering the cost of legal advice of \$9,936.

[4] MOVE Freight says Mr Putaanga is not entitled to costs for his own time as a self-represented person in the Authority and the disbursements sought in the circumstances are not recoverable by Mr Putaanga.

¹ *Putanga v MOVE Freight Limited* [2023] NZERA 415, and *Putanga v MOVE Freight Limited* [2025] NZERA 425.

² The normal practice of the Authority when setting costs is to apply a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff. The current daily tariff is \$4,500 for the first day of an investigation meeting and \$3,500 for every subsequent day of an investigation meeting.

³ Quantifying the cost of his own time at \$95 per hour.

[5] MOVE Freight claims it should be awarded costs of \$6,500 based on:

- (a) Mr Putaanga rejecting a Calderbank offer, which if accepted would have put him in a better position than the outcome of my investigation and determination of this employment relationship problem.⁴ MOVE Freight says this means costs should be reversed notwithstanding Mr Putaanga's success.
- (b) The substantive investigation was effectively a one-day investigation meeting justifying an award of \$4,500 based on the daily tariff.
- (c) The daily tariff should be increased by \$2,000 to reflect additional work required by it due to the way in which Mr Putaanga progressed the employment relationship problem.

Analysis

Costs in the Authority

[6] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.⁵

Should costs follow the event?

[7] The presumption with costs is that costs should follow the event so that a successful party is awarded costs from the other party.

⁴ 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. This is so that the offer can be used for assessing costs once the claim has been determined.

⁵ For further information about the factors considered in assessing costs, see:

www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

[8] In this case MOVE Freight says that presumption does not apply because Mr Putaanga rejected a Calderbank offer that it made to him. This rejection was in circumstances where the offer was for more compensation than Mr Putaanga received in my determination, so Mr Putaanga would have been better off if he accepted the offer.

[9] This argument is based on what I view as a traditional civil litigation application to Calderbank offers. That is, if a successful party has rejected a Calderbank offer to settle from the other party and has then not been awarded an amount in the subsequent decision that betters the offer then the successful party should not be awarded costs rather costs should be awarded to the other party. The rationale is that a party continuing with claims after rejecting the Calderbank offer was futile and unnecessary because they would have gained more from accepting the offer and would have avoided the ongoing costs for both parties by ending the claims through acceptance of the offer.

[10] Applying that here, MOVE Freight says Mr Putaanga was not successful in relative terms (considering the rejected offer) and therefore MOVE Freight should be awarded costs.

[11] I do not accept that this approach to enforcing Calderbank offers is appropriate in the Authority. Calderbank offers are commonly applied as a relevant consideration in adjusting the daily tariff rate but not to reverse costs from a successful applicant.

[12] So, I conclude that Mr Putaanga is entitled to costs insofar as he was successful, and costs should follow the event.

Applying the daily tariff

[13] The next issue is what costs award Mr Putaanga is entitled to receive. The key point here is that Mr Putaanga was self-represented and costs in the Authority are recognised as being a contribution to the costs of representation incurred by a successful party.

[14] Whilst there has been some recognition of the costs associated with self-represented litigants in civil courts that has not been extended to the Authority. There has been no

decision made by the Authority that this is appropriate and therefore the current position is that Mr Putaanga is not entitled to an award of costs reflecting the cost of his own time in representing himself.

[15] Mr Putaanga did however have legal representation in connection with aspects of his employment issues with MOVE Freight. To the extent this advice assisted him with the employment relationship problem that was investigated and determined in the Authority then he is entitled to receive a contribution towards those costs from MOVE Freight.

[16] Mr Putaanga says he should be paid all his legal costs, of \$9,936, as a disbursement. I do not accept this. To award Mr Putaanga this full amount would probably put Mr Putaanga in a better position than if he had been represented by the lawyer throughout the investigation of this matter as he would likely have been awarded \$9,000 for costs based on the application of the daily tariff – noting also that he would have paid more in legal fees for that representation.

[17] In this case the best approach is to award a part of the total applicable daily tariff, which reflects what I ascertain to be the work undertaken by Mr Putaanga's lawyer in advancing the employment relationship problem that I determined.

[18] In this regard I have reviewed the invoices provided by Mr Putaanga for his legal advice and conclude that he received advice on his employment relationship problem generally, assistance with settling part of the problem and then advice on and assistance with the further steps required for the unresolved aspects of the problem. All this work contributed to the subsequent work Mr Putaanga undertook in representing himself in the Authority.

[19] Standing back and reflecting on this work as part of the whole process of investigation and determination of an employment relationship problem in the Authority I conclude that Mr Putaanga is entitled to receive one quarter of one day of the daily tariff – this is \$1,125.

Disbursements

[20] Mr Putaanga has claimed disbursements for printing, travel and parking of \$255. These disbursements are not normally awarded as costs in the Authority unless there is some circumstance attaching to the disbursement that warrants it being paid by the other party. That is not the case here.

[21] Mr Putaanga is entitled to receive payment of the filing fee of \$71.55.

Order

[22] MOVE Freight is to pay Mr Putaanga \$1,125 as a contribution to his costs in this matter and disbursements of \$71.55.

Peter van Keulen
Member of the Employment Relations Authority