

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 512
3308620

BETWEEN ONYX RAPANA
Applicant

AND UBP LIMITED
Respondent

Member of Authority: Claire English

Representatives: Dave Cain, advocate for the Applicant
Roger Stewart for the Respondent

Submissions received: 23 July 2025 from Applicant
24 July 2025 from Respondent

Determination: 22 August 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 25 June 2025, the Authority issued a determination in this matter, finding that the applicant Mr Rapana had a personal grievance for unjustifiable dismissal, and awarding the sum of \$10,200 without deduction as compensation for hurt and humiliation.

[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, noting that the investigation meeting lasted half a day and the Authority's normal tariff for a half day hearing would amount to \$2,250.00.

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

[4] On behalf of Mr Rapana, it is submitted that:

- a. The appropriate starting point is the tariff for a three-quarter day, being the sum of \$3,375.00, as the investigation meeting concluded at 1.46 pm.
- b. A valid Calderbank offer existed, where Mr Rapana offered to settle the matter for a total of \$25,000 plus costs. This should be taken into account in Mr Rapana's favour as it presented an opportunity to reach an amicable solution prior to hearing.
- c. An uplift should be granted as there was no meaningful communication from the respondent (UBP) meaning Mr Rapana faced further costs to resolve his grievance.
- d. UBP's initial refusal to engage in mediation should be taken into account.
- e. The applicant has incurred costs of \$15,610.35, including the filing fee of \$71.55.
- f. A costs award of \$6,500 plus reimbursement of the filing fee is appropriate in the circumstances.

[5] The respondent says:

- a. The Calderbank offer was reasonably declined, as the offer was disproportionate to the claim and to the eventual award.
- b. The respondent made a counter-offer that included reinstatement on full terms, which was rejected.
- c. UBP has acted in good faith, and once a case conference call had been held with the Member to discuss matters, it agreed to attend mediation and did so attend.
- d. The matter was resolved efficiently, and the starting point should be a half day amounting to \$2,250.00.
- e. UBP also incurred a substantial amount of time defending the claim.

[6] For completeness, I record that UBP in correspondence suggested it would apply for a stay. I invited it to make an application for a stay separate from its costs submissions if it wished to do so. At the time of writing this costs award, no application for a stay or any further correspondence regarding a stay has been received. Accordingly, this determination deals with costs only.

Analysis

[7] 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:

[8] 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*¹ as confirmed in *Fagotti v Acme and Co Limited*². The principles set out in the above cases are that:

- a. Awards are to be modest.
- b. Awards are to be only a reasonable contribution to costs actually and reasonably incurred.
- c. Awards are not to be used as a punishment or expression of disapproval.

[9] In the present case, the applicant was successful, and he is therefore entitled to an award of costs.

[10] 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 days³.

[11] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[12] Having considered matters, I adopt my previously indicated view that the appropriate starting point for this matter is that the investigation meeting took half a day. Accordingly, the correct starting point for any costs award is half of the first day tariff, being \$2,250.00.

[13] I must then consider whether any uplift to this starting point is appropriate. The applicant refers to a Calderbank letter. Given that it is accepted that the Calderbank letter proposed by the applicant was an offer to settle for significantly more than the Authority awarded, this does not suggest that any uplift is required.

¹ [2005] 1 ERNZ 808.

² [2015] NZEmpC 135 at 114.

³ For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

[14] In terms of the submission from the applicant that there was a lack of meaningful communication from the respondent and the respondent initially resisted attending mediation, I find that this downplays what occurred, especially as I am now advised that the applicant declined an offer of reinstatement, which was by any account a type of meaningful communication. This does not justify an uplift.

[15] My substantive determination has already recorded my view that issues around attendance at mediation were resolved after discussion at a case management conference, and I decline to consider this grounds for an uplift in all the circumstances.

[16] Accordingly, I am not persuaded that there are proper grounds for any uplift from the tariff.

[17] I note the claim for the reimbursement of the filing fee, and as the applicant was the successful party, this should be properly awarded.

Orders

[18] UBP Limited is ordered to pay to Mr Onyx Rapana within 28 days of the date of this determination the sum of \$2,250.00 (inclusive) as a contribution to costs, plus the sum of \$71.55 being reimbursement of his filing fee.

Claire English
Member of the Employment Relations Authority