

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2025] NZERA 479
3301820

BETWEEN SAHIL SAHIL
 Applicant

AND FIRST SECURITY LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Arunjeev Singh, advocate for the Applicant
 Mary Breckon O’Sullivan, representing the Respondent

Costs Submissions 23 July 2025 from the Applicant
 30 June 2025 from the Respondent

Determination: 06 August 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 4 June 2025 ([2025] NZERA 761), the Authority found that the Applicant, Sahil Sahil, had not been unjustifiably dismissed from, and unjustifiably disadvantaged in, his employment with the Respondent, First Security Guard Services Limited (FIRST).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and both parties have filed submissions in respect of costs.

[3] The matter involved two days of meeting time. Ms Breckon O’Sullivan on behalf of FIRST. is seeking an uplifted contribution to costs on the basis of a Calderbank offer, that is a without prejudice save as to costs offer.¹

[4] Ms Breckon O’Sullivan submits that FIRST made a Calderbank offer to Mr Sahil on 28 April 2025 which invited him to discontinue his claim without any additional costs associated with the matter.

[5] The Calderbank Offer remained open for acceptance until 5 p.m. on 1 May 2025.

¹ *Calderbank v Calderbank* [1976] Fam 93 (CA)

[6] Mr Sahil did not accept the Calderbank Offer. Instead he responded with a Counter-offer to settle the matter for the sum of \$35,000.00 as compensation.

[7] It is submitted by Ms Breckon O'Sullivan that Mr Sahil's rejection of the Calderbank Offer was unreasonable in consideration of the strength of his case. It is also submitted that Mr Sahil's Counter-offer being made the day before the hearing was an unreasonable attempt to resolve matters and allowed little time for the parties to explore a resolution of the matter.

[8] FIRST is therefore seeking a contribution to costs in the sum of \$16,492.29.

[9] Mr Sahil submits that his rejection of the Calderbank Offer was reasonable because FIRST did not offer him any sum to settle the matter.

[10] Mr Sahil submits that he incurred significant legal costs in presenting his claim in the Authority. In addition he is currently unemployed and as an 'over-stayer' on his visa, is due to leave New Zealand.

[11] He submits that he relies on his wife's modest income to meet household expenses and has no financial ability to pay costs. He further submits that there is no basis for the uplift in costs sought by FIRST.

Principles

[12] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

15 Power to award costs

(1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.

(2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[13] Costs are at the discretion of the Authority². The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)*³.

[14] It is a principle set out in *Da Cruz* that costs are not to be used as a punishment. It is also a principle that costs are discretionary and awards made are consistent with the Authority's equity and good conscience jurisdiction.

² *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622

³ *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808

[15] Principles also include that costs normally follow the event. In this matter, FIRST were the successful party

The Calderbank Offer

[16] Mr Sahil claimed that the Calderbank Offer was unreasonable because it offered no sum to settle the matter.

[17] I observe that the Employment Court noted that the public interest in the fair and expeditious resolution of disputes would be adversely affected if parties were permitted to ignore without prejudice offers without costs being impacted. As observed in *Lancom Technology Limited v Forman*:

the scarce resources of the Courts should not be burdened by litigants who choose to reject reasonable settlement offers, proceed with litigation and then fail to achieve any more than was previously offered.⁴

[18] I consider that the Calderbank Offer offered Mr Sahil, who was wholly unsuccessful in his claims before the Authority, the opportunity to withdraw his application before the Authority heard the matter.

[19] The Calderbank Offer was made with sufficient time for Mr Sahil to consider it, and if he had accepted it, he would have incurred no further legal costs from that point onwards.

[20] The Counter-offer being made the day before the investigation meeting did not allow any opportunity for the parties to negotiate and/or resolve the matter prior to the hearing, and did not have the effect of reducing costs for either party.

[21] I consider that the Calderbank Offer should be accorded weight in balancing the various considerations in determining the level of a costs award.

[22] The starting point for costs is the normal daily tariff as applied in the Authority. For a two day hearing this equates to \$8,000.00. FIRST is seeking an uplifted costs contribution in the sum of \$16,492.29.

[23] Mr Sahil has provided supporting evidence of his financial position.

[24] It is not appropriate for the Authority to impose hardship upon an unsuccessful party to proceedings. However I note the observation of Judge Inglis that:

⁴ *Lancom Technology Limited v Forman* [2018] NZEmpC 30 at [38]

... the fact that a costs award would impose undue financial hardship on an unsuccessful litigant is not, in my view, decisive. Even accepting that in this jurisdiction an unsuccessful party's current financial position is relevant to an assessment of costs, like other considerations it must be weighed in the exercise of the Court's discretion. The interests of both parties, and broader public policy considerations, must also be taken into account.⁵

[25] Having weighed all these considerations, I find that whilst FIRST as the successful party is entitled to an award of costs in excess of the normal tariff, this is a case in which it is appropriate for the Authority to use its discretion by making an award that also recognises the financial hardship making an award of costs at the level submitted by FIRST would mean for Mr Sahil.

[26] **Mr Sahil is ordered to pay FIRST the sum of \$6,000.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.**

Eleanor Robinson
Member of the Employment Relations Authority

⁵ *Tomo v Chekmate Precision Cutting Tools Ltd* [2015]EmpC 2 at [22]