

[3] The parties have not been able to resolve costs between themselves and consequently a determination resolving this final issue to my investigation is now required. Briefly stated, Mr Singh through his representative seeks an uplift in costs to \$5,500 and relies on an uplift for filing written closing submissions and a *Calderbank* offer to get to this end point. It may be noted that the written *Calderbank* offer was made in September 2024 (by which time proceedings had commenced in the Authority) and was for \$12,000 plus costs.

[4] TSL deny that any uplift is required because the *Calderbank* offer that was made totalled \$16,500 when costs are properly included. Given that this sum is more than what was awarded to Mr Singh by the Authority in its determination, it was submitted that costs of \$2,250 only should be awarded.

What costs principles should apply?

[5] The Authority has the power under sch 2 cl 15 of the Act to award costs. However, the discretion to order a party to pay costs to another must be exercised on a principled basis. Those principles are well settled and are outlined in the Authority's Practice Note,³ and Practice Direction,⁴ both of which are publicly available online.

[6] Informing the Authority's approach to costs is the leading decision of *PBO v Da Cruz* in which the Employment Court established key principles for the Authority to consider when determining costs. For this determination, those key principles relevantly comprise:⁵

- There is a discretion as to whether costs are awarded and in what amount.
- The discretion is to be exercised in accordance with principle and not arbitrarily.
- Equity and good conscience is to be considered on a case by case basis.
- That costs generally follow the event.
- That awards will be modest.
- That frequently costs are judged against a notional daily rate.
- *Calderbank* offers may be taken into account when setting costs.

³ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

⁴ www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf.

⁵ *PBO Ltd (formerly Rush Security Ltd v Da Cruz* [2005] 1 ERNZ 808 at [44].

Costs analysis

[7] I awarded Mr Singh \$13,369 and reimbursement of the filing fee of \$71.55. While this was less than Mr Singh's total Calderbank offer to TSL of \$16,500, by a slim margin, TSL was better off not to accept the offer.

[8] Mr Kersjes referred me to the Authority's costs determination in *Scott v E Cycles NZ Limited* [2023] NZERA 693. While the decision deals with a Calderbank offer, the facts are not on all fours with the present case and is distinguishable. In *Scott* an uplift was warranted because of the respondent's decision not to accept Mr Scott's reasonable Calderbank offer which turned out to be around one half of the gross value of the award that was eventually made by the Authority. Had the respondent accepted the Calderbank offer made by Mr Scott, it would have been considerably better off and Mr Scott would not have had to incur additional legal fees in the Authority.

[9] Mr Kersjes invited me to consider an uplift of \$1,250 for closing written submissions. I decline to do so as this is a normal step in the Authority similar to parties attending mediation for which costs are not typically awarded.

[10] Mr Singh has incurred costs of representation and he has been invoiced \$14,690.35 by his representative. The well-established principle that costs follow the event applies here. While the successful party, it has not been established that an uplift ought to apply to my notional starting point noted above for this case.

Order

[11] For the reasons given above, the Authority orders Three Sixty Limited to pay Navjot Singh \$2,250 as a contribution towards his actual and reasonable costs. Payment is to be made no later than Friday 28 November 2025.

Peter Fuiava
Member of the Employment Relations Authority