

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2018] NZERA Wellington 6
3008973

BETWEEN	LETITIA STEVENS Applicant
AND	ALISON GREEN LAWYER LIMITED First Respondent
AND	ALISON GREEN Second Respondent

Member of Authority:	Vicki Campbell
Representatives:	Jenny Murphy for Applicant Glenn Mason for Respondent
Submissions received:	21 December from Respondents 9 January from Applicant
Determination:	30 January 2018

**COSTS DETERMINATION OF THE EMPLOYMENT RELATIONS
AUTHORITY**

A. Costs will lie where they fall.

[1] In a determination dated 13 December 2017¹ I held Ms Green was not unjustifiably dismissed and one or more conditions of her employment were not affected to her disadvantage by the unjustifiable actions of Ms Green. I also held Ms Stevens had not breached her statutory duty of good faith and declined Ms Green's application for penalties.

¹ [2017] NZERA Wellington 130.

[2] I reserved costs, indicating that if the parties were unable to resolve costs, both parties would have the opportunity to file cost memoranda and evidence. The parties have been unable to resolve the matter and Ms Green has applied for costs.

Determination of costs

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The principles applying to costs are well settled and do not require repeating.² Under normal circumstances the Authority would apply a starting point of a notional daily tariff for quantifying costs. The current daily tariff is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.³

[4] Both parties had a measure of success. Ms Green was entirely successful in defending Ms Steven's claims against her, while Ms Stevens was equally successful in defending Ms Green's claims against her.

[5] As recently noted by the Employment Court, determining which party is entitled to costs where both parties have had a measure of success is often a nuanced assessment of competing considerations.⁴

[6] I am aware of four Calderbank offers made between the parties. Two offers were made by Ms Green and two by Ms Stevens. All four offers were rejected. Both believed their clients would be successful at the investigation meeting. The offers related to the substantive claims made by Ms Stevens. During the exchange of the offers Ms Stevens was put on notice that if an application was lodged with the Authority Ms Green would be making a counter-claim against Ms Stevens for alleged breaches of good faith.

² *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

³ Practice Note 2, Costs in the Employment Relations Authority.

⁴ *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

[7] Standing back and considering matters in the round, I decline to exercise the Authority's discretion to award costs in Ms Green's favour. I consider that it is in the overall interests of justice for costs to lie where they fall.

Vicki Campbell
Member of the Employment Relations Authority