

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 537
3304360

BETWEEN RACH STILLMAN
Applicant

AND BROTHER COFFEE
LIMITED
Respondent

Member of Authority: Natasha Szeto

Representatives: Alex Kersjes, advocate for the Applicant
Anna Barnett, counsel for the Respondent

Submissions received: 17 June 2025 from the Applicant and
1 July 2025 from the Respondent

Date: 28 August 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] On 2 May 2025, I issued a determination¹ in which I found Ms Stillman was unjustifiably dismissed. Brother Coffee Limited was ordered to pay Ms Stillman \$20,000.00 in compensation for humiliation, loss of dignity and injury to feelings. I declined to order lost wages or a penalty for a breach of good faith.

[2] In the determination, I referred to the Authority's usual practice of applying the daily tariff to determine costs and the parties were encouraged to resolve any issue of costs between them. They have been unable to do so, and this determination accordingly resolves the issue of costs.

¹ *Rach Stillman v Brother Coffee Limited* [2025] NZERA 239.

Parties' submissions

[3] Ms Stillman lodged and served a memorandum in respect of costs on 12 June 2025. She asks the Authority to award her \$7,000.00 as a fair and reasonable contribution to her actual costs of \$17,404.35. Ms Stillman's claim is based on the following assessment:

- (a) Ms Stillman was successful on her substantive claim even if she was not successful on her claim for lost wages or penalties.
- (b) The investigation meeting ran for almost a full day and the appropriate starting point is the one day tariff of \$4,500.00.
- (c) A valid and operative *Calderbank* offer totalling \$20,000.00 plus costs was made in October 2024 some four months prior to the investigation meeting but was declined. On this basis, a 50 percent uplift to tariff is reasonable.

[4] Brother Coffee filed a reply costs memorandum on 1 July 2025. Brother Coffee says that the investigation meeting concluded before 3:00 pm and the tariff to be applied would be three quarters of a day. It says an appropriate starting point for costs is \$2,500.00 plus GST because Ms Stillman was not successful in respect of her claims for unjustified dismissal on a substantive basis, lost wages and penalties.

[5] However, Brother Coffee also says it has no ability to pay any costs to Ms Stillman. It has submitted a copy of the financial accounts for the 2024 / 2025 financial year and says Ms Stillman has been aware of this situation throughout the life of this proceeding.

[6] In relation to the *Calderbank* offer, Brother Coffee says no uplift is warranted because if it had accepted the offer (which included a costs component of \$5,525.00 plus GST) it would ultimately have been worse off.

Analysis

[7] The Authority has clear statutory power to order such costs and expenses to be paid as the Authority thinks reasonable.² Costs are awarded at the Authority's

² Employment Relations Act 2000, Schedule 2, clause 15.

discretion.³ The principle that costs follow the event is well-recognised by the Authority and courts.⁴

[8] In this case, Ms Stillman was successful in relation to her claim of unjustified dismissal on a procedural fairness basis. While I found that Ms Stillman was not entitled to lost wages as a remedy or a penalty in respect of a breach of good faith, Ms Stillman's mixed success is still success. She is entitled to an award of costs.

[9] The Authority has adopted a daily tariff approach as the starting point for considering costs, which is well known. The current daily tariff is \$4,500.00 for the first day of hearing.⁵ The parties can expect the Authority to adhere to the approach of applying the daily tariff, unless there is good reason to depart from it. In this case, the investigation meeting ran for three quarters of a full day. I proceed on the basis that the appropriate starting point is \$4,500.00 which acknowledges the time taken to prepare and participate in a full day's investigation meeting.

[10] 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*⁶ as confirmed in *Fagotti v Acme and Co Limited*⁷.

[11] It is a principle set out in *Da Cruz* that costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct. The financial situation of the party paying costs can be a relevant factor to take into account. Awards made should be modest, and consistent with the Authority's equity and good conscience jurisdiction. A robust approach is to be adopted in relation to *Calderbank* offers. The Employment Court has noted that such an approach is "consistent with the public interest in encouraging the acceptance of reasonable settlement offers and avoiding unnecessary litigation".⁸

[12] I have seen the *Calderbank* offer made by Ms Stillman. I accept Brother Coffee's submission that it did not reject a reasonable settlement offer because if it had accepted the offer it would have been in a slightly worse position given the costs

³ *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622.

⁴ *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [48].

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

⁶ [2005] 1 ERNZ 808.

⁷ [2015] NZEmpC 135 at 114.

⁸ *Booth v Big Kahuna Holdings Limited* [2015] NZEmpC 4.

component of the offer was \$5,525.00 plus GST. In this case, the *Calderbank* offer does not require an uplift to the tariff.

[13] Brother Coffee says it is not in a position to meet any award of costs. It has provided financial statements in support of the submission that no costs should be ordered. Brother Coffee is a limited liability company and remains registered on the Companies Register. I am not persuaded that the company is unable to meet a costs award but in any case, the issue of whether Brother Coffee is in a position to meet a costs order when it becomes due is a matter for enforcement.

[14] Stepping back to look at matters overall and considering parity with other cases, an award of \$4,500.00 as a contribution to Ms Stillman's costs actually and reasonably incurred represents a modest and appropriate costs award in the circumstances. Ms Stillman should also be reimbursed the Authority's application fee.

Orders

[15] For the reasons set out above, I order Brother Coffee Limited to pay Rach Stillman within 28 days of the date of this determination:

- (a) The sum of \$4,500.00 as a contribution to her costs.
- (b) The sum of \$71.55 as a disbursement, being the Authority's filing fee.

Natasha Szeto
Member of the Employment Relations Authority