

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 426
3299580

BETWEEN	JULIA TEO Applicant
AND	THE SURREY HOTEL Respondent

Member of Authority:	Peter Fuiava
Representatives:	Alex Kersjes, advocate for the Applicant Matt McGoldrick and Karishma Zafar, counsel for the Respondent
Submissions received:	30 May 2025 from the Applicant 19 May 2025 from the Respondent
Determination:	16 July 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination dated 28 April 2025 I declined Julia Teo’s employment problem in which she claimed that she was a ‘person intending to work’ in terms of s 6(1)(b)(ii) of the Employment Relations Act 2000.¹

[2] The question of costs was reserved and the parties were encouraged (not directed) to resolve this matter between themselves if possible.² As this last issue to my investigation remains unresolved and as The Surrey Hotel (SHL of the hotel) seeks costs against Ms Teo, an Authority determination on costs is required.

[3] In short, the hotel seeks costs against Ms Teo *vis-à-vis* the current notional tariff for the first day of an investigation meeting in the Authority, which is \$4,500.

¹ *Julia Teo v The Surrey Hotel Limited* [2025] NZERA 249 at [40].

² Above at [41].

[4] On Ms Teo's behalf, Mr Kersjes submits that costs should lie where they fall because she brought her claim in good faith and that it was accepted (by me) that she honestly believed in the evidence she gave.³ In addition, it was submitted that costs should not deter employees from accessing justice for legitimate concerns.

What costs principles apply?

[5] The Authority has the power under sch 2 cl 15 of the Employment Relations Act 2000 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,⁴ and Practice Direction,⁵ 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 comprise:⁶

- 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.
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

The Surrey Hotel is entitled to costs

[7] While the case fell to be decided on what I considered most probably happened on the balance of probabilities, by any measure, SHL was the successful party having defended Ms Teo's claim. However, this was not without the hotel incurring significant

³ *Teo v Surrey Hotel*, above n 1, at [35].

⁴ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

⁵ www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf.

⁶ *PBO Ltd (formerly Rush Security Ltd v Da Cruz* [2005] 1 ERNZ 808 at [44].

legal expenses totalling \$24,422.27, evidence of which was provided to the Authority as part of Mr McGoldrick's costs submissions.

[8] The investigation meeting started at 10 am and concluded at 3.15 pm. I consider four-fifths of the applicable notional tariff or \$3,600 to be reasonable in all the circumstances. Given the amount spent by the hotel in successfully defending the claim, it would be unfair for it to have to shoulder all of that expense without some contribution by Ms Teo. She is to understand that the nature of her case does not fall in any of the categories noted in the Authority's Practice Direction where the parties could expect to bear their own costs.⁷

[9] That said, I take into consideration in the cost-setting exercise, Ms Teo's administrative support role for an intermediate school, the fact that she was not able to commence her conditional offer of employment at SHL due to circumstances not of her choosing, and her recent separation from her partner.

[10] While Ms Teo conducted her case appropriately in the Authority, it nevertheless required an investigation meeting and a determination that in the end, found against her. Although how a case is conducted is highly relevant in setting costs, the way Ms Teo's case was run is a neutral consideration that warrants neither an upwards nor downwards adjustment in costs. Mr Kersjes' concern that cost awards should not deter employees from accessing the legal system is a valid one, but there are countervailing public interests that require consideration as well.

[11] Those public interests include that the award of costs can encourage parties to engage in good-faith negotiations before they go to court and incur unnecessary legal expenses. Further, the Authority's modest approach to costs goes a long way to lessen the chilling effect a significant costs award might have on employees pursuing legitimate grievances. This preserves access to justice for all parties, including those who can least afford it.

[12] Applying all of the above including the Authority's good conscience and equity jurisdiction to the present case, I consider that the hotel's interests as well as those of

⁷ Practice Direction, n 5, at pg 5, paragraph 6(i) to (ix).

Ms Teo can best be met by not requiring costs to lie where they fall, but rather by ordering that payment of costs be spread over a period of nine months.

Costs order

[13] For the reasons given above, the Authority orders Julia Teo to pay The Surrey Hotel costs of \$3,600 as a contribution towards its actual and reasonable costs.

[14] Payment is to be made in nine equal instalments of \$400 with the first payment on Friday 29 August 2025 and every consecutive last Friday of the month until the total amount of \$3,600 is paid in full.

Peter Fuiava
Member of the Employment Relations Authority