

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2021] NZERA 318  
3102595

BETWEEN	YONGNAN KANG Applicant
AND	ONE PURE INTERNATIONAL GROUP LIMITED Respondent

Member of Authority: Vicki Campbell

Representatives: Mere King, counsel for Applicant  
Rob Towner, counsel for Respondent

Submissions received: 5 July 2021 from Applicant  
9 July 2021 from Respondent

Determination: 23 July 2021

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A. One Pure International Group Limited is ordered to pay to Mr Kang the sum of \$10,321.56 as a contribution toward costs within 28 days of the date of this determination.**

[1] Two determinations have been issued in respect of Mr Kang's applications to the Authority.<sup>1</sup> The first determination declined Mr Kang's application for interim reinstatement but resulted in orders being made to prevent publication of certain information.

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<sup>1</sup> *Kang v One Pure International Group Ltd* [2020] NZERA 211; *Kang v One Pure International Group Ltd* [2021] NZERA 270.

[2] The second determination resolved Mr Kang's employment relationship problems by finding one or more conditions of Mr Kang's employment were affected to his disadvantage by the unjustified actions of One Pure International Group Ltd (One Pure) and he was unjustifiably dismissed.

[3] The issue of costs was reserved in both determinations and the parties were encouraged to resolve the matter between them. I indicated to the parties that if I was asked to determine costs, my assessment would be the applicable daily tariff. Despite attempts to do so, the parties have not been able to reach a resolution on the matter of costs and have asked the Authority to determine the issue.

[4] 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 Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.<sup>2</sup> The principles applying to costs are well settled and do not require repeating.<sup>3</sup>

[5] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.<sup>4</sup>

[6] By the consent of the parties Mr Kang's application for interim reinstatement was dealt with on the papers. As noted Mr Kang was not successful in this application and so is not entitled to an award of costs on his application. I have taken One Pure's success in that application into account later in this determination.

[7] The investigation into Mr Kang's substantive claims took three days with a further one and a half hours spent interviewing a witness who attended remotely after the face to face investigation had been completed. In total this is just over three days which equates to a starting point of \$12,500.

[8] In submissions Mr Kang seeks a contribution in excess of \$100,000 for his costs plus reimbursement for GST. The exercise of the Authority's discretion to award costs

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

<sup>3</sup> *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

<sup>4</sup> Practice Note 2, Costs in the Employment Relations Authority.

under cl 15(1) of the Employment Relations Act 2000 is on the basis that the daily tariff is an all-inclusive, GST neutral figure and his application in this regard is declined.

[9] Mr Kang has invited the Authority to adjust the daily tariff to take into account preparation time for the investigation meeting, but I am not inclined to do so. In its submissions One Pure has raised issues about the level of costs incurred by Mr Kang which were significantly greater than One Pure's costs.

[10] As noted by the Employment Court parties are entitled to adopt a belts-and-braces approach to litigation but this is not a choice that can automatically be visited on the unsuccessful party:<sup>5</sup>

The point is particular apposite in the Authority, which is statutorily designed to be an investigative, non-technical, low level, and readily accessible forum. That suggests two things. First, that the legal costs of preparing for and attending at an investigation meeting should be modest. Second, imposing a substantial costs burden on unsuccessful litigants almost inevitably gives rise to access to justice issues ...

[11] The Court has also noted:<sup>6</sup>

As the Act makes plain, Parliament intended the Authority to be an accessible forum for parties (of varying financial means; capabilities; and resources) to bring their employment issues to it for speedy, non-technical, pragmatic resolution. While there will be some cases where a process more akin to the adversarial processes of the Court might be appropriate, with their associated (often costly) bells and whistles, many cases in the Authority do not require this sort of approach. The point is that the Authority was designed as a new model for dispute resolution in this jurisdiction, with the Authority member taking on an inquisitorial role and effectively driving the investigative process.

[12] Further in relation to an application for uplift the Court stated:<sup>7</sup>

...[P]reparation time is plainly built into the Authority's notional daily rate. If it were not, the per hour rate for appearing at an investigation meeting in the Authority would vastly exceed that which is allowed for in this Court under the Court's Scale Guidelines. In this regard it is notable that the per day allowance for appearances on a mid-range case in this Court (and in the High Court) in terms of complexity was \$2,230 at the relevant time (it has now increased).<sup>25</sup> The Authority's notional daily rate is twice that amount, namely \$4,500 for the first day; \$3,500 for each subsequent day.

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<sup>5</sup> *Booth v Big Kahuna Holdings Ltd* [2015] NZEmpC 4 at [15].

<sup>6</sup> *Elisara v Allianz New Zealand Ltd* [2020] NZEmpC 13 at [26] citations omitted.

<sup>7</sup> *Elisara* above n 6 at [35] citations omitted.

[13] There was a mixed measure of success by both parties. Although Mr Kang was successful in his key claim that he was unjustifiably dismissed other aspects of his claim were not successful. The situation of mixed success has been examined by the Court in *Coomer v JA McCallum and Son Limited*.<sup>8</sup>

[14] Ultimately I must stand back and look at things in the round.<sup>9</sup> Having done so Mr Kang is clearly the successful party.

[15] As noted earlier One Pure successfully defended Mr Kang's application for interim reinstatement and aspects of Mr Kang's claim for disadvantage. For that reason the tariff is to be reduced to take into account One Pure's success at defending Mr Kang's claim for interim reinstatement. The parties were not required to attend a face to face investigation meeting for the interim matter, as that was dealt with on the papers. Given that, I have allowed half of the daily tariff (\$2,250) as a reduction to the contribution to costs.

[16] Mr Kang seeks reimbursement of his filing fee as a disbursement. It is appropriate for an award of \$71.56 to be made in this case.

[17] One Pure International Group Limited is ordered to pay to Mr Kang the sum of \$10,321.56 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority

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<sup>8</sup> *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

<sup>9</sup> *Ibid* at [43].