

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 401
3102812

BETWEEN

RAN CHEN
Applicant

AND

WNY GORUP LIMITED
First Respondent

LI WU
Second Respondent

Member of Authority: Marija Urlich

Investigation Meeting: On the papers

Representatives: Applicant, in person
Jennifer Wickes, for Respondent

Determination: 13 September 2021

DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination on 19 August 2021 which declined Mr Chen's claim that he was an employee who had been unjustifiably dismissed.¹ The issue of costs was reserved and a timetable set for filing memoranda if the parties were unable to resolve costs themselves.² WNY Group Limited and Mr Wu (the respondents) now apply jointly for a costs award in their favour.

The respondents' claim for costs

[2] The respondents seek a contribution to costs of \$6,500. Submissions filed on their behalf include total costs incurred in relation to this matter of \$16,779.92. These costs exclude costs incurred in attending mediation. Supporting detailed invoices have been provided.

¹ *Ran Chen v WNY Group Limited and Li Wu* [2021] NZERA 369.

² Above [24].

Mr Chen's response

[3] Mr Chen submits the respondents' claim for costs is unreasonable because they chose to engage a lawyer to represent them in the proceedings and this is a cost they should bare because the parties have not agreed how legal costs will be dealt with. The costs incurred are unnecessary and unreasonable and no evidence has been provided to prove the costs have been paid.

[4] Mr Chen also sets out reasons why he believes the Authority substantive determination is wrong. These matters have been considered and determined by the Authority in the substantive determination.

Costs principles

[5] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* the Employment Court set out principles guiding the Authority's approach to costs which include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.³

Costs analysis

[6] The respondents were the successful party. It is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party's costs. That the Authority is a costs forum was drawn to the parties'

³ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 8080, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmp 135.

attention in several minutes. It is accepted the respondents have incurred actual costs in respect of this matter. They should receive a contribution to costs incurred.

[7] The notional daily tariff is a starting point. The applicable daily tariff is \$4,500.00 for the first day and \$3,500 for every day thereafter. Costs for a full hearing day plus four hours on the second day are sought. The hearing of this matter took that long. There is no information before the Authority that the costs incurred are not actual or reasonable. The respondents are entitled to representation of their choice. Considering all issues raised there are no factors which would justify a reduction in the tariff.

[8] Ran Chen is ordered to pay WYN Group Limited and Li Wu a total of \$6,500.00 towards the costs of representation within 21 days of the date of this determination.

Marija Urlich
Member of the Employment Relations Authority