

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 280  
3117860

BETWEEN

LILI WANG  
First Applicant

XIAO YI  
Second Applicant

AND

YUJING ZHANG  
First Respondent

BAOZHE XU  
Second Respondent

B&S TRADE CORPORATION  
LIMITED  
Third Respondent

HAPPY RAA LIMITED  
Fourth Respondent

Member of Authority: Peter van Keulen

Representatives: Daniel Zhang, counsel for the Applicants  
Yujing Zhang for the Respondents

Investigation Meeting: On the papers

Submissions received: 24 April 2023 from the applicants  
No submissions from the Respondents

Date of Determination: 31 May 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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## **The substantive determination**

[1] In a determination dated 11 April 2023,<sup>1</sup> I found that:

- (a) B&S Trade Corporation Limited had failed to pay Lili Wang correctly for holidays;
- (b) Happy Raa Limited had failed to pay Ms Wang correctly for holidays; and
- (c) Happy Raa had failed to pay Xiao Yi correctly for holidays and for the full hours he had worked.

[2] In addition to various orders for payment I reserved costs. The parties have been unable to agree costs and now Ms Wang and Mr Xiao seek costs.

### **Application for costs**

[3] Ms Wang and Mr Xiao seek an award of costs of \$12,674.00 and disbursements. They seek this amount, based on two and one half days for the investigation meeting with the rate for each day increased due to what they say was the unmeritorious claims of the respondents.

[4] Nothing has been received from any of the four respondents.

### **Analysis**

#### *Costs in the Authority*

[5] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice note on costs.<sup>2</sup>

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<sup>1</sup> *Lili Wang and Xiao Yi v Yujing Zhang and others* [2023] NZERA 171.

### *Costs for Ms Wang and Mr Xiao*

[6] The starting point is that costs should follow the event. In this case however exactly what that means for any costs award is complicated by the multi-party and multi claim matter that I investigated and determined:

- (a) Ms Wang claimed against B&S Trade and Baozhe Xu for breaches of her employment rights whilst she worked at Buns Bakery. Ms Wang was only successful against B&S Trade but not for all of her claims.
- (b) Ms Wang and Mr Xiao claimed against Happy Raa for breaches of their employment rights whilst they worked at Ilam Food Bar. Mr Xiao's claim was significantly larger as it involved a greater period of employment and more claims, including an unjustifiable dismissal claim. Ms Wang and Mr Xiao were only successful against Happy Raa but not for all of their claims.
- (c) Happy Raa claimed against Mr Xiao for breaches of his employment agreement – Mr Xiao successfully defended this claim.

[7] Based on this Ms Wang is entitled to an award of costs for her success against B&S Trade and Ms Wang and Mr Xiao are entitled to an award of costs against Happy Raa for their successes against it.

### *Applying the daily tariff*

[8] The next question is whether I should follow the normal practice of the Authority when setting costs, which is applying a set amount for each day of the investigation meeting calculating quantum based on the time spent in the investigation meeting; this is applying the daily tariff.

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<sup>2</sup> For further information about the factors considered in assessing costs, see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).

[9] There is no reason, in this case, to depart from the usual practice of awarding costs based on the daily tariff.

*Adjusting the daily tariff*

[10] I am not accept that any of the four respondents acted in a way, in responding to the claims against them, that was unmeritorious such that would justify an increase to the daily tariff:

- (a) Each respondent was entitled to respond to the claims. Both Companies had some success in that not all of Ms Wang and Mr Xiao's claims were successful against them. And the claims against the directors were not successful as the actions for recovery of penalties were withdrawn.
- (b) Ultimately Happy Raa failed in its counterclaim against Mr Xiao. The claim was misconceived because Happy Raa misunderstood the obligations that Mr Xiao owed to it and the facts were not established. But this does not make the claim unmeritorious such that an increase in costs is justified.

*Applying the daily tariff in this case*

[11] The current daily tariff is \$4,500.00 for the first day of an investigation meeting and \$3,500.00 for every subsequent day of an investigation meeting.

[12] The investigation meeting for all claims was two and a half days. So, applying the daily tariff this means a total of \$9,750.00 should be awarded.

[13] So, B&S Trade and Happy Raa are to pay \$9,750.00 in costs to Ms Wang and Mr Xiao. Based on the claims and the investigation meeting, the following division of those costs is appropriate:

- (a) Ms Wang is to receive a contribution to her costs for her claim against B&S Trade of \$2,000.00.

(b) Ms Wang is to receive a contribution to her costs for her claim against Happy Raa of \$2,000.00.

(c) Mr Xiao is to receive a contribution to his costs for his claims against Happy Raa and defending the claim against him by Happy Raa, of \$5,750.00.

[14] Ms Wang and Mr Xiao are also entitled to be paid the filing fee of \$71.56. This amount is to be apportioned between the parties.

### **First Order**

[15] B&S Trade Corporation Limited is to pay Lili Wang \$2,000.00 as a contribution to her costs in this matter, plus \$17.89 as part of the filing fee. This is to be paid within 14 days of this determination.

### **Second Order**

[16] Happy Raa Limited is to pay Lili Wang \$2,000.00 as a contribution to her costs in this matter, plus \$17.89 as part of the filing fee. This is to be paid within 14 days of this determination.

[17] Happy Raa Limited is to pay Yi Xiao \$5,750.00 as a contribution to his costs in this matter, plus \$35.78 as part of the filing fee. This is to be paid within 14 days of this determination.

Peter van Keulen  
Member of the Employment Relations Authority