

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 285  
3148981  
3148961

BETWEEN	JIANGHUA CHEN First Applicant
AND	JINCHUN CHEN Second Applicant
AND	L2M CONSTRUCTION LIMITED Respondent

Member of Authority:	Sarah Blick
Representatives:	David Kim, advocate for the applicants Liua He Tau Manu for the respondent
Investigation meeting:	On the papers
Submissions and information received:	11 May 2023 from the applicants No information from the respondent
Determination:	1 June 2023

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] The Authority issued a determination on 28 April 2023 finding the applicants Jianghua Chen and Jinchun Chen were unjustifiably dismissed by the respondent L2M Construction Limited (L2M). The applicants were awarded compensation and reimbursement of lost wages. Wage and holiday pay arrears were also awarded, and a penalty imposed as a result of employment standards breaches.<sup>1</sup>

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<sup>1</sup> *Chen and Anor v L2M Construction Limited* [2023] NZERA 211.

[2] The applicants attempted to resolve the issue of costs but it appears L2M did not engage with them, resulting in their application for costs to the Authority. L2M did not lodge any response to the costs application within the time set in the Authority's earlier determination, nor has it applied for leave to respond outside of that time. L2M has also not responded to the Authority's email correspondence regarding the costs application. The Authority now determines costs based on the information provided.

### **Costs principles**

[3] The Authority has power under clause 15 of Schedule 2 of the Employment Relations Act 2000 to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs 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.

### **Costs assessment**

[4] 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. The applicants should receive a contribution to costs incurred as the successful parties.

[5] In assessing an appropriate award of costs the notional daily tariff is the starting point. The applicable daily tariff for the first day of an investigation meeting is \$4,500. Although not explicitly stated in their costs application, it appears the applicants are seeking the full daily tariff amount in costs. However, this matter took less than a full day, attracting a proportional starting point of \$3,000.

[6] From that amount, the next step in the assessment is to consider whether there are factors warranting an increase or decrease in the tariff. There are no factors to warrant either an increase or decrease.

[7] It is appropriate to award reimbursement of the two Authority application fees paid by the applicants.

**Outcome**

[8] L2M Construction Limited is ordered to pay Jianghua Chen the amount of \$1,500 in costs and \$71.56 (being the Authority application fee) within 28 days of the date of this determination.

[9] L2M Construction Limited is ordered to pay Jinchun Chen the amount of \$1,500 in costs and \$71.56 (being the Authority application fee) within 28 days of the date of this determination.

Sarah Blick  
Member of the Employment Relations Authority