

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 732
3141261

BETWEEN	BAOYOU LIU Applicant
AND	ALLSTAR ROOFING LIMITED First Respondent
AND	MINGYANG MA Second Respondent
AND	MENGYAO YU Third Respondent

Member of Authority:	Andrew Gane
Representatives:	David Kim, advocate for the Applicant Cherrie Holland, counsel for the Respondent
Investigation meeting	On the papers
Determination:	7 December 2023

SECOND DETERMINATION OF THE AUTHORITY

[1] By determination dated 29 August 2023, I found Baoyou Liu was unjustifiably disadvantaged by Allstar Roofing Limited (ARL).¹

[2] I reserved the amount of wage arrears and encouraged the parties to resolve any issues of wage arrears between themselves. I also reserved costs and encouraged the parties to resolve any issues of costs between themselves.

[3] The parties have been unable to resolve the issues of wage arrears and costs. Mr Liu's representative provided submissions in support of Mr Liu's claim for wage arrears

¹ [2023] NZERA Auckland 484.

and an award of costs payable to Mr Liu by ARL. These submissions have been served on ARL, who has not responded.

Wage Arrears

[4] Mr Liu drafted a table setting out the calculation of wage arrears as set out in paragraph [36] of the determination.² ARL's representative acknowledged receipt of the calculation of wages and sought instructions from ARL. There has been no further response from ARL. Based on the calculation, which based on the evidence in my investigation meeting I accept in its entirety, Mr Liu is owed \$7,706.80. ARL is to pay Mr Liu \$7,706.80 in wage arrears.

Holiday pay

[5] ARL must also pay annual holiday pay of 8% on the arrears of wages set out above. ARL is to pay Mr Liu is \$616.54 in holiday pay.³

Interest

[6] Mr Liu can recover interest on his contractual entitlement as set out in paragraphs [4] above, from the date of termination, being 14 January 2021, until the date of payment. He has asked that the I calculate the interest for him. The order for payment of interest is made under clause 11(1) of Schedule 2 of the Employment Relations Act 2000. Interest is to be calculated by ARL using the Civil Debt Interest Calculator.⁴

[7] The interest calculated on the amounts set out in paragraph [4] is \$594.39 and paragraph [5] is \$47.55.

[8] The interest calculated on the amounts set out in paragraph [38] of the determination⁵ for public holidays (\$1,547.24) is \$119.33.

² *Liu v Allstar Roofing Limited* [2023] NZERA 484.

³ Holidays Act 2003, s 28.

⁴ <http://www.justice.govt.nz/fines/civil-debt-interest-calculator>.

⁵ *Liu v Allstar Roofing Limited* [2023] NZERA 484.

Orders

[9] Mr Liu was unjustifiably disadvantaged for which remedies have been awarded. His claims for wage arrears have been upheld. I make the following orders:

- (a) Within 28 days of this of determination ARL is ordered to pay Mr Liu the following sum:
 - (i) Wage arrears of \$7,706.80.
 - (ii) Holiday pay of \$616.54.
- (b) Interest to Mr Liu as awarded in paragraph [6]-[8] above \$761.27.

Costs

[10] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Act. The principles and the approach adopted by the Authority in which an award of costs is made are settled.

Costs follow the event

[11] I find there is no reason to depart from the usual principle that a successful party is entitled to a contribution towards their representation costs.

Application of the daily tariff

[12] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500.00 for the first day of hearing, and \$3,500.00 for subsequent hearing days.⁶

[13] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[14] Mr Liu has requested costs based on the daily tariff. ARL has not put forward any argument as to why there should be a departure from the normal daily tariff rate of \$4,500.00 for the day of hearing. I find no reason to depart from using the daily tariff and that, therefore is the basis of the award of costs.

[15] The investigation meeting in this matter was for one day. The parties attended together with their representatives and other witnesses.

⁶ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1 .

Orders

[16] Mr Liu was the successful party and is entitled to receive an award of costs. This means Mr Liu is entitled to an award of costs of \$4,500.00 and reimbursement of the \$71.55 lodging fee.

Andrew Gane
Member of the Employment Relations Authority