

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 164  
3177190

BETWEEN	RUNGWANWILAI (ONE) KONGBANG Applicant
AND	LOTUS TOUCH LIMITED First Respondent
AND	CRAIG JOHNSON Second Respondent

Member of Authority: Andrew Gane

Representatives: David Fleming, counsel for the Applicant  
Deno Montepara, counsel for the Respondent

Investigation Meeting: On the papers

Submissions and other: 22 December 2023 and 8 March 2024 from Applicant  
material received: 13 March 2024 from Respondent

Determination: 20 March 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Background**

[1] In my determination dated 6 December 2023, I found Rungwanwilai Kongbang was owed wage arrears and holiday pay from Lotus Touch Limited (LTL). I did not find that Craig Johnson was a person involved in a breach of minimum standards.<sup>1</sup>

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<sup>1</sup> *Kongbang v Lotus Touch Limited & Anor* [2023] NZERA 727.

[2] In my determination I also reserved costs and encouraged the parties to resolve any issues of costs between themselves.

[3] The parties have been unable to resolve costs.

[4] Ms Kongbang seeks an order for costs against LTL but not against Mr Johnson. Ms Kongbang seeks payment of \$7,743.35 in costs and reimbursement of the lodging fee.

[5] Ms Kongbang's application for costs was served on LTL, but it has not responded.

#### *Legal Aid*

[6] Ms Kongbang is legally aided. LTL is not legally aided.

[7] Ms Kongbang will be required to repay the amount of her legal aid grant out of any monies recovered from the LTL. Ms Kongbang submits that although legal aid costs are not directly invoiced to her, they should be recognised as costs incurred by her.

[8] Ms Kongbang's request for costs of \$7,743.35 is based on the amount invoiced to legal aid.

#### *Costs in the Authority*

[9] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Employment Relations Act 2000. The principles and the approach adopted by the Authority in which an award of costs is made are settled.

#### *Costs follow the event*

[10] 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*

[11] 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.<sup>2</sup>

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

[13] The investigation meeting in this matter was for two and a half days. The costs based on the tariff would exceed the costs claimed by Ms Kongbang and any award must be limited to costs that were actually incurred. So, the daily tariff amount will be reduced to reflect this.

### **Conclusion**

[14] Ms Kongbang was the successful party and is entitled to receive an award of costs. This means Ms Kongbang is entitled to an award of costs and payment for the lodgement fee of \$71.56.

### **Order**

[15] Lotus Touch Limited is ordered to pay Rungwanwilai Kongbang \$7,743.35 as a contribution to her costs in this matter and disbursements of \$71.56.

Andrew Gane  
Member of the Employment Relations Authority

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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) .