

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 218  
3249759

BETWEEN	XIAOOU SUN Applicant
AND	ALLIED FAXI NEW ZEALAND FOOD CO., LTD Respondent

Member of Authority:	Eleanor Robinson
Costs Submissions:	3 January 2024 from the Applicant 21 March 2024 from the Respondent
Determination:	16 April 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] In a determination dated 15 March 2024 ([2024] NZERA 149) it was determined that the Applicant, Xiaou Sun, was not owed monies by the Respondent, Allied Faxi New Zealand Food Co Ltd (Allied Faxi) in respect of driving a company vehicle and petrol reimbursement.

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately, they have been unable to do so, and the Applicant is seeking a contribution to costs.

[3] The investigation meeting involved slightly over a half day investigation meeting.

[4] Mr Drake, on behalf of Allied Faxi, cites actual costs of \$6,586.63 including GST, is seeking a contribution to costs based upon a half day hearing time plus the cost of preparing submissions after the investigation and the costs for this cost's application.

*The Calderbank Offer*

[5] Mr Drake submits that Allied Faxi made a Calderbank<sup>1</sup> offer, that is a “without prejudice save as to costs” offer to settle that matter to Mr Sun 20 November 2023. Allied Faxi

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<sup>1</sup> *Calderbank v Calderbank* [1976] Fam 93 (CA)

offered to settle the matter on the basis that it would pay the Authority's filing fee on the basis that Mr Sun withdrew his claim. The Offer was not accepted by Mr Sun.

[6] Mr Drake submits that the Calderbank Offer was a genuine attempt to resolve all matters between the parties in order to avoid any escalation in costs.

[7] A Calderbank offer can be taken into consideration by the Authority as providing a consideration for an uplift in the daily tariff. However, in this case, RBL is not seeking to rely upon it.

### **Costs Award**

[8] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup> that costs are modest. Principles also include that costs are not a punishment, are reasonable and that they normally follow the event.

[9] I see no reason for not applying these principles in this case. Allied Faxi was the successful party in the matter.

[10] Costs in the Authority are made in accordance with a daily tariff amount which is currently set at \$4,500.00 for the first day of hearing.

[11] The investigation meeting occupied just over a half day of hearing time, with costs being made following the investigation.

[12] I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take a half day of an investigation meeting as the appropriate starting point.

[13] I have also considered what weight should be given to the Calderbank Offer. It offered Mr Sun only the Authority filing fee, and therefore the weight given is not significant.

[14] From this I make allowance for the Calderbank Offer and the submissions.

[15] **Accordingly, Mr Sun is ordered to pay Allied Faxi the sum of \$3,500.00 towards its legal costs, pursuant to clause 15 of Schedule 2 of the Act.**

Eleanor Robinson  
Member of the Employment Relations Authority

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<sup>2</sup> [2005] 1 ERNZ 808