

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 512  
3234960

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT Applicant
AND	PALACE RESTAURANT COMPANY LIMITED First Respondent
AND	YI TING WANG Second Respondent
AND	CHING JU WANG Third Respondent

Member of Authority:	David G Beck
Representatives:	Claudia Milesi-Humm for the Applicant Amy Keir and Kendal Cosgrove for the Respondents
Investigation Meeting:	On the papers
Submissions received:	25 July 2024 from the Applicant 11 July 2024 for the Respondents
Date of Determination:	26 August 2024

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**COST DETERMINATION OF THE AUTHORITY**

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**The Determination**

[1] Following an investigation meeting in Christchurch, the Labour Inspector withdrew their claims against Ching Ju Wang on the basis that it became clear during the initial investigation meeting stage that Ching Ju Wang had overstated her involvement in identified breaches of minimum standards during the Labour Inspector's initial investigation. However,

the claims against Yi Ting Wang proceeded and she was found to have been a party to nine breaches of minimum standards relating to multiple statutory breaches flowing from a failure to keep compliant wage time and holidays records and two separate issues relating to arrears of pay for two identified workers.

[2] Yi Ting Wang conceded seven of eleven identified breaches during the Authority's initial investigation stage and that she was a person involved in all of the identified breaches pursuant to s 142W Employment Relations Act 2000 (the Act). Culpability for a further two of the identified breaches being wage and holiday pay arrears claims for the two identified workers, were unsuccessfully contested.

[3] The Authority issued a determination of 17 June 2024 finding as follows.

#### **Penalties**

Within 28 days of the date of this determination being issued Palace Restaurant Company Limited must pay to the Authority for transfer to a Crown bank account: a penalty in the sum of \$15,000.

On the same terms as above: Yi Ting Wang must pay a penalty to the Authority in the sum of \$5,000.

The Crown once receiving the amounts specified above shall transfer a proportion of the penalties paid to:

- i) Xiang Ru Lin in the amount of \$5,000; and
- ii) Hai Ru Chen in the amount of \$5,000.

#### **Arrears**

Palace Restaurant Company Limited must also pay the following amounts of arrears of wages and holiday pay combined, due within the same timeframe above (28 days) to:

- i) Xiang Ru Lin in the amount of \$23,876.62
- ii) Hai Ru Chen in the amount of \$16,506.50.<sup>1</sup>

#### **Submissions**

[4] After citing relevant legal authorities,<sup>2</sup> counsel for the Labour Inspector briefly submitted that having successfully obtained rulings in their favour the Labour Inspector seeks

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<sup>1</sup> *A Labour Inspector v Palace Restaurant Company Limited, Yi Ting Wang and Ching Ju Wang* [2024] NZERA 355.

a contribution to costs of \$15,000 for an investigation that took four and a half days including submissions. The latter figure was based upon compromise of the tariff for four investigation days (i.e. \$4,500 for the first day and \$3,500 for each day thereafter). In addition, reimbursement of expenses for the hearing fees (\$1,073.31); the filing fee (\$71.56) and witness expenses (\$36.00) were sought as being legitimately incurred. The Labour Inspector sought that the first and second respondents be held jointly and severally liable for any costs award.

[5] Counsel for the respondents submitted that the costs should not be awarded to any party on the basis that the Labour Inspector's success had been 'mixed'. Counsel further suggested that the claims against Ching Ju Wang (that she was a person involved in the breaches) had been abandoned and that in such circumstances costs should be awarded due to her for Ching Ju Wang being required to participate in the proceedings and incur legal costs (although no evidence of this was provided).

[6] Further, the respondents' counsel submitted that previous evidence proffered suggesting the first respondent company was not profitable and the second respondent (sole director) had limited resources should be considered in any costs award. However, this evidence that was not updated in the costs' application did not establish that the second respondent was impecunious and there was no evidence to suggest the business is not trading.

### **Costs principles**

[7] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. The discretion it is accepted is guided by principles set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>3</sup> including those costs are not to be used as a punishment or as a reflection on how either party conducted proceedings and that awards are to be made consistent with the equity and good conscience jurisdiction of the Authority.<sup>4</sup>

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<sup>2</sup> *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808 and *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

<sup>3</sup> *Ibid.*

<sup>4</sup> Section 160(2) Employment Relations Act 2000.

## **Assessment**

[8] A general principle for a successful party is that costs should ‘follow the event’ and here the Labour Inspector established several key breaches and significant arrears and penalties were awarded.

[9] Taking all the circumstances into account, the Authority determines the costs sought by the Labour Inspector are appropriate (\$15,000) but that they be reduced by \$1,000 to reflect that the claims against Ching Ju Wang did not proceed and she incurred some costs. I consider such to be at a modest contribution level as Ching Ju Wang’s initial statement during the Labour Inspector investigation, that her involvement in the management of the business was more extensive led to a reasonable assumption of culpability. This was later clarified in Ching Ju Wang’s brief of evidence and oral evidence given during the investigation meeting.

[10] In addition, the Authority acknowledges that the Labour Inspector incurred legitimate expenses being the hearing; filing fees and witness expenses and such are awarded for reimbursement.

## **Orders**

[11] The Authority orders that within 28 days of this determination being issued Palace Restaurant Company Limited and Yi Ting Wang be held jointly and severally liable to the Labour Inspector of the Ministry of Business, Innovation and Employment for the following payments that must be met in full:

- (i) A cost contribution of \$14,000 and:
- (ii) The reimbursement sums of \$1,073.31 being the Authority investigation meeting fees and \$71.56 for the Authority Filing Fee and \$36.00 witness expenses, pursuant to clause 15 of the Second Schedule of the Employment Relations Act 2000.

David G Beck  
Member of the Employment Relations Authority