

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 603  
3173683

BETWEEN                      GANG CHEN  
                                         Applicant  
  
AND                              CHULONGJI NZ LIMITED  
                                         First Respondent  
  
                                         DEWEI YANG  
                                         Second Respondent

Member of Authority:        Peter Fuiava  
  
Representatives:              David Kim for the Applicant  
                                         Martin Lyttelton for the Respondents  
  
Submissions received:        13 September 2024 from the Applicant  
                                         26 August, 23 September, and 7 October 2024 from the  
                                         Respondents  
  
Determination:                9 October 2024

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] By determination dated 15 July 2024,<sup>1</sup> I dismissed Gang Chen’s claim of alleged wage arrears and unpaid annual leave. The question of costs was reserved and a timetable for the filing of memoranda was put in place if the parties were not able to reach their own agreement regarding costs. This determination resolves the issue of costs.

**How has the Authority proceeded?**

[2] The respondents failed to lodge their costs submissions in time and needed to apply for leave as a result. Mr Lyttelton accepted responsibility for the error and referred to personal circumstances which need not be described here in any detail. Suffice to say, I accepted both his apology and his explanation and granted the respondents’ application to apply for costs out of time.

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<sup>1</sup> *Gang Chen v Chulongji NZ Limited & Dewei Yang* [2024] NZERA 427.

### **What is the successful parties' position regarding costs?**

[3] Mr Lyttelton seeks \$15,000 in costs based on the Authority's notional daily tariff for a four-day investigation meeting (\$4,500 for the first day and \$3,500 for the second day). It was submitted that the respondents' actual costs exceeds this amount.

[4] On 4 October 2024, I requested Mr Lyttelton to provide supporting evidence of his invoices to the respondents. The requested information was provided which shows that he was paid a retainer totalling \$24,000 by the second respondent, Dewei (Andrew) Yang. Mr Lyttelton makes clear that while he has acted for both respondents, his fee was paid for by Mr Yang only and not the first respondent, Chulongji NZ Limited (Chulongji).

### **What is the applicant's position regarding costs?**

[5] The applicant's representative, Mr Kim, has filed brief submissions in response. He observes (correctly) that Chulongji was removed from the New Zealand Companies Register on 20 June 2024 and consequently lost its eligibility to apply for costs as it no longer exists. It was further submitted that Mr Yang's involvement in the investigation meeting was limited.

### **What is the Authority's approach to costs?**

[6] The Authority has the power under sch 2 cl 15 of the Employment Relations Act 2000 to award costs. However, the discretion to order a party to pay costs to another party must be exercised in accordance with principle. Those principles are well settled and are outlined in its practice note which is publicly available.<sup>2</sup> Further information is also available in its Practice Direction.<sup>3</sup>

[7] Informing the Authority's approach on costs is relevant caselaw such as *PBO v Da Cruz* in which the Employment Court observed that, since its inception, the Authority has held to some basic tenets concerning costs which relevantly include:<sup>4</sup>

- Costs generally follow the event (i.e. the unsuccessful party will normally be required to contribute to the costs of the successful party).

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<sup>2</sup> [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).

<sup>3</sup> [www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf](http://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf).

<sup>4</sup> n 2 at [44].

- Calderbank offers may be taken into account when setting costs.
- That awards will be modest.

### **How much costs should be awarded against Mr Chen?**

[8] Correspondence provided by Mr Lyttelton suggests that there have been settlement offers and counter offers made by both of the parties to resolve matters prior to the investigation meeting. However, I understand Mr Lyttelton not to be relying on these for an uplift which is appropriate because the respondents' settlement offers do not appear to have been made on a Calderbank basis.

[9] I disagree with Mr Kim's description of Mr Yang's involvement in the investigation meeting being "limited" especially when it was Mr Kim who lodged an amended statement of problem in the Authority that sought to join him and another third party as additional respondents to this employment problem. This necessitated a preliminary determination on joinder in which the applicant was partially successful in that Mr Yang was joined to the proceedings as a second respondent and the third party was not.<sup>5</sup>

[10] The investigation meeting lasted four days and Mr Lyttelton seeks costs totalling \$15,000 which is a straight application of the notional tariff for an investigation of this duration (\$4,500 for the first day of and \$3,500 for the second and every subsequent day). I see no reason to depart from the usual maxim that costs follow the event. However, with its removal from the Companies Register, Chulongji is no longer entitled to costs because it is no longer a legal entity.

[11] Mr Yang is entitled to costs having successfully defended himself against Mr Chen's claims. However, there is a need to recognise the applicant's partial success with the earlier preliminary determination which I dealt with on the papers. Mr Chen is entitled to costs of \$1,250 for that application which is to be offset against the \$15,000 in costs he must pay to Mr Yang.

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<sup>5</sup> At [19].

## **Outcome and order**

[12] For the reasons given above, the Authority orders **Gang Chen is to pay Dewei Yang \$13,750 as a contribution towards his actual and reasonable costs no later than Friday 8 November 2024.**

Peter Fuiava  
Member of the Employment Relations Authority