

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 697
3264119

BETWEEN SHUJIANG GONG
Applicant

AND L&S EARTHMOVING
LIMITED
First Respondent

AND XIAOLIANG LIU
Second Respondent

Member of Authority: Andrew Gane

Representatives: May Moncur, counsel for the Applicant
No appearance for the First and Second Respondent

Submissions: 24 October 2024 from the Applicant
No submissions from the Respondents

Date: 22 November 2024

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] By determination issued on 16 October 2024 L&S Earthmoving Limited (LSE) was ordered to pay remedies and a penalty for unjustifiably dismissing Shujiang Gong.¹

[2] Costs were reserved and the parties encouraged to resolve any issues of costs between themselves. They have been unable to resolve costs.

¹ *Gong v L&S Earthmoving Ltd & Anor* [2024] NZERA 622

[3] Mr Gong seeks an order for LSE and Mr Liu to pay \$5,850.00 in costs and disbursements. His application for costs was served on LSE and Mr Liu, but neither have responded. LSE and Mr Liu have not participated in any part of these proceedings.

The Authority's Investigation

Costs in the Authority

[4] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Employment Relations Act 2000.

Costs follow the event

[5] The usual principle for costs is that a successful party is entitled to a contribution towards their costs of representation and I find there is no reason to depart from that.

Application of the daily tariff

[6] The Authority has adopted a daily tariff approach as the starting point for considering costs. The current daily tariff is \$4,500.00 for the first day of hearing, and \$3,500.00 for subsequent hearing days.²

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

[8] The investigation meeting for this matter took one day so the starting point for any costs award is \$4,500.

Adjusting the daily tariff

[9] Mr Gong has submitted that there should be a 30 per cent uplift to the daily tariff (\$1,350.00), as LSE and Mr Liu's failure to engage in the proceedings caused additional costs. He submits that a costs award of \$5,850.00 would be reasonable.

[10] This matter was investigated in person with the assistance of an interpreter of Mandarin. Mr Gong's representative spoke to her submissions. The failure of LSE and

² For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

Mr Liu to participate in the proceedings did not make the proceedings longer or more difficult so I find no good reason to depart from using the daily tariff.

Should cost be awarded against Mr Liu?

[11] Mr Gong seeks that the costs be ordered against both respondents jointly and severally.

[12] In my determination I found Mr Liu could not be a person involved in a breach of employment standards within the meaning of s142W of the Act.³ The case against Mr Liu was unsuccessful, so he cannot be held liable for costs.

Conclusion

[13] Mr Gong was the successful party and is entitled to an award of costs of \$4,500 and is also entitled to payment of \$71.56 for the lodging fee.

Orders

[14] L&S Earthmoving Limited is ordered to pay Shujiang Gong \$4,500 as a contribution to his costs in this matter and disbursements of \$71.55 for the lodging fee. This is to be paid within 28 days of this determination.

Andrew Gane
Member of the Employment Relations Authority

³ Employment Relations Act 2000, ss 142W and 142Y