

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 121
3252779

BETWEEN	SHUNXU ZHOU Applicant
AND	6 METER HOMES LIMITED First Respondent
AND	WENBIN HUA Second Respondent

Member of Authority:	Nicola Craig
Representatives:	May Moncur, advocate for the applicant Ray Parmenter, counsel for the respondent
Submissions received:	28 January 2025 from the applicant 4 February 2025 from the respondents
Determination:	28 February 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Authority issued a determination about Shunxu Zhou's employment with 6 Meter Homes Limited (6 Meter or the company).¹ 6 Meter and its director Wenbin Hua were found to have sought a premium for employment from Mr Zhou in breach of the Wages Protection Act 1983. The company was found to have unjustifiably dismissed Mr Zhou and owe him remedies, along with holiday pay. Mr Hua was also found to be a person involved in the failure to pay holiday pay.

¹ *Shunxu Zhou v 6 Meter Homes Limited and Wenbin Hua* [2025] NZERA 22.

[2] The parties were encouraged to resolve any question of costs between themselves but were unable to do so. Brief submissions were received on behalf of the parties.

Mr Zhou's costs application

[3] Costs on a standard tariff based approach were sought - \$13,250 for a 3.5 day investigation meeting. That is seen as being a fair and reasonable approach.

[4] A finding of joint and several liability for costs on 6 Meter and Mr Hua is sought.

6 Meter and Mr Hua's submissions

[5] The company and Mr Hua do not oppose the use of the tariff. However, they consider that the tariff should not be applied over three and a half days as the investigation meeting should have been completed in two days. This was attributed to Mr Zhou's representative - a lack of planning and last minute decisions to call witnesses, repetitive questioning of Mr Hua and various allegations about character without a basis.

[6] An award of \$8,000 costs is seen as appropriate.

The Authority's costs principles

[7] The Authority has the power to award costs.² This power is discretionary but must be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* principles guiding the Authority's approach to costs are outlined including:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction
- Equity and good conscience is to be considered on a case by case basis
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award
- Costs generally follow the event
- Awards will be modest
- Frequently costs are based on a notional daily tariff.³

² Employment Relations Act 2000, Schedule 2, cl 15.

³ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

Costs analysis

[8] The starting point is the tariff based on the length of the investigation meeting. The notional daily tariff allows for \$4,500 for the first day and \$3,500 for subsequent days. There were three relatively full days of evidence with submissions being heard on the last day by audio-visual link for less than half a day.

[9] Relatively short witness statements were provided by all, given that there were substantial issues regarding the premium, alleged failure to provide work and dismissal. The immigration adviser was a last minute additional witness. Both factors necessitated fairly extensive questioning.

[10] Standing back and looking at the justice of the matter overall I consider that Mr Zhou should receive an award of costs of \$11,500. Given Mr Hua had findings made against him it is fair that he should bear responsibility as well as 6 Meter. Mr Zhou is also entitled to be reimbursed for the Authority's filing fee.

Orders

[11] I order that 6 Meter Homes Limited and Wenbin Hua are jointly and severally liable to pay Shunxu Zhou within 28 days of the date of this determination:

- \$11,500.00 as a contribution to his costs; and
- \$71.55 for the Authority's filing fee.

Nicola Craig
Member of the Employment Relations Authority