

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 182
3341560

BETWEEN	XIANPING XUE (AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF BOWEN ZHANG) Applicant
AND	NYF LIMITED Respondent

Member of Authority:	Nicola Craig
Representatives:	Paul Young, advocate for the applicant Martin Lyttelton, advocate for the respondent
Submissions and other information received:	5 and 18 February and 5 March 2025 from the applicant 18 February 2025 from the respondent
Determination:	28 March 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 24 October 2024 the Authority issued a determination (the first determination) resolving issues between Bowen Zhang, Yunfei Nie and his company NYF Limited (NYF or the company).¹

[2] Then on 25 November 2024 Mr Zhang applied to the Authority for a compliance order against NYF regarding the first determination (file 3341560).

¹ *Bowen Zhang v Yunfei Nie and NYF Limited* [2024] NZERA 638.

[3] A costs determination regarding the first determination was issued.² This was later challenged by NYF and Mr Nie and an Employment Court judgment has recently been issued.³

[4] As noted in the judgment Mr Zhang has died. The Authority passes on its condolences to Mr Zhang's family.

[5] The Court proceeded on the basis that Mr Zhang's widow Xianping Xue would be the personal representative of Mr Zhang's estate, and to allow the proceedings to continue, would be substituted for Mr Zhang as the named defendant.

[6] On becoming aware of the Court's judgment, the Authority proposed taking the same approach regarding Ms Xue in this proceeding and gave the parties an opportunity to comment. No response was received.

[7] After payment under the first determination was made in January 2025, costs were sought in this compliance application. The parties were given the opportunity to resolve that matter between themselves but were unable to do so. Submissions have been received from both parties on costs.

Mr Zhang's costs application

[8] On behalf of Mr Zhang's estate, costs of \$540.00 along with the Authority's filing fee are sought. An invoice is provided for that sum. Costs are sought as there was a need to seek enforcement via the compliance application as payment had not been made within the specified time period.

NYF's costs submissions

[9] Submissions outline events over the course of litigation between the parties. They include comments more related to the challenge to the Authority's costs determination regarding the first determination.

[10] Criticisms are made of Paul Young, who was Mr Zhang's, and is now Ms Xue's, representative. These include matters which were the subject of the Court's judgment.

[11] NYF argues Mr Zhang should not be awarded costs here.

² *Bowen Zhang v Yunfei Nie and NYF Limited* [2024] NZERA 760.

³ *NYF Limited and Yunfei Nie v Xianping Xue (as the personal representative of the Estate of Bowen Zhang)* [2025] NZEmpC 47.

The Authority's costs principles

[12] The Authority has the power to award costs.⁴ 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.⁵

Costs analysis

[13] At the point this compliance application was lodged in the Authority the time for payment under the first determination had expired with payment not received. Reminders had been sent on Mr Zhang's behalf. Payment was made a little under two months after it was due, although this time did include the Christmas/New Year period. There is no suggestion that NYF was unaware of its obligations.

[14] It was legitimate for a compliance order to be sought when an amount ordered to be paid under an Authority determination has not been paid within the time specified. The first determination was not challenged, although even if it had been, a challenge does not amount to a stay.⁶

[15] There is thus a basis on which costs should be ordered. The drafting and lodging of a statement of problem seeking a compliance order was needed. No investigation meeting was required as the sum outstanding was paid by NYF, but some communications were required. The sum of \$540 is not unreasonable and there is no

⁴ Employment Relations Act 2000 (the Act), Schedule 2, cl 15.

⁵ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

⁶ The Act, s 180.

indication of another way in which the sum outstanding under the first determination could be obtained, other than through seeking compliance.

[16] I have considered the Court's examination of the contingency arrangement in the letter of engagement between Mr Young and Mr Zhang which concluded that Mr Young would receive 50% of any costs award under that arrangement.⁷ There, the need for an award of costs not to exceed Mr Young's entitlement to 50% of the substantive award (amounting to \$856.16 after tax) and 50% of any costs, reduced what would otherwise have been the costs award.⁸

[17] That is not an issue here as the compliance application effectively sought payment of the same amount as the first determination's orders had not been paid. As \$858.16 is more than is being sought for costs on the compliance application, no adjustment is needed.

[18] The Court indicates Mr Zhang was responsible under the letter of engagement for filing fee payment, so NYF should reimburse that here.

Orders

[19] I order NYF Limited to pay Xianping Xue (as the personal representative of the estate of Bowen Zhang) within 21 days of the date of this determination the following regarding file 3341560:

- \$540.00 as a contribution to his costs; and
- \$71.55 for the Authority's filing fee.

Nicola Craig

Member of the Employment Relations Authority

⁷ Above at n 3, at [18].

⁸ Above at n 3, at [19] – [22].