

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 424

3304580

BETWEEN BAILIE LYNCH
Applicant

AND CUCINA OAMARU LIMITED
Respondent

3304600

BETWEEN JESSICA CROSSLEY
Applicant

AND CUCINA OAMARU LIMITED
Respondent

Member of Authority: Andrew Dallas

Representatives: Alex Kersjes, advocate for Applicant
Louise Laming, counsel for Respondent

Submissions: 24 June 2025 for the Respondent and 9 July for the Applicants

Determination: 16 July 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination issued on 3 June 2025¹, the Authority made findings and gave orders about Bailie Lynch and Jessica Crossley's employment relationship problems with Cucina Oamaru Limited (Cucina). The Authority reserved the issue of costs as follows:

[44] Costs are reserved. However, as both Ms Lynch and Ms Crossley were successful in recovery of penalties against Cucina, and are also currently university students with limited means, this is a matter where costs could (and probably should) lie where they fall.

[45] If costs are sought, the parties are encouraged to resolve any issue of costs between themselves. If the parties are unable to resolve costs, and an

¹ *Lynch and Crossley v Cucina Oamaru Limited* [2025] NZERA 308

Authority determination on costs is needed, Cucina may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Ms Lynch and Ms Crossley will then have 14 days to lodge any reply memorandum.

[2] Notwithstanding the above, the issue of costs has not been resolved. It now falls to me to formally resolve this final issue between the parties.

Each party claims costs against the other

Cucina's claim for costs

[3] The investigation meeting lasted one day. Cucina's total costs for responding to both Ms Lynch and Ms Crossley's employment relationship problems including mediation, GST and disbursements was \$20,062.90. Cucina says its costs exclusive of mediation are \$16,564.60, of which it seeks a contribution of \$1,500 from each former employee.

[4] Cucina said while there was "mixed success" between the parties to these proceedings – that is, the successful defence of the personal grievances but was penalised for not having individual employment agreements in place – its' success was, in effect, greater because the "penalty imposed [in favour of Ms Lynch and Ms Crossley] is minor in the scheme of the overall claim".

[5] Cucina said while it had "taken on board the indication of costs lying where they fall, the Authority made that statement without the benefit of correspondence exchanged by the parties "on a without prejudice save as to costs basis". Cucina said it made such an offer on 22 March 2024. The offer was in the form of an email appended to Cucina's submissions, which was sent to Ms Lynch and Ms Crossley's representative.

[6] Upon review the offer of proposed settlement was greater than either Ms Lynch and Ms Crossley achieved before the Authority for their alleged personal grievances, which was nothing. However, Cucina said while it was "acknowledged by ...[them] from the outset" that there had been a failure to provide either with an employment agreement, this was not acknowledged, let alone addressed in the offer. Indeed, the only time the words "employment

agreement” seem to appear in the offer are in relation to Mr Crossley signing an employment agreement with, what is assumed to be, Whitestone Cheese Diner & Deli.²

[7] In the end, Cucina said it only relied on the offer in support of “a small contribution towards its significant costs” and not by way of an “uplift” to the Authority’s tariff for a one-day investigation meeting of \$4,500.

Ms Lynch and Ms Crossley’s claim for costs.

[8] Ms Lynch and Ms Crossley submitted that while they were not successful in their personal grievances, they were successful in relation to obtaining a penalty for failure to provide each with an employment agreement. Accordingly, and relying on what was said to be precedent³, they were entitled to costs from Cucina.

[9] Ms Lynch and Ms Crossley’s costs were said to be \$8,839.15 and \$8,728.75 respectively. It was submitted that as both are students and of limited means it would be “just and reasonable” to award them costs.

[10] Ms Lynch and Ms Crossley said they did not seek costs on a punitive basis and accepted there should be some reduction to the Authority’s daily tariff. Each sought a contribution to costs of \$1,000 plus reimbursement of the Authority’s lodgement fee of \$71.55.

Outcome

[11] In all the circumstances of the case, I find costs should lie where they fall except as set out below at [12]. Cucina made a reasonable offer to settle Ms Lynch and Ms Crossley’s personal grievances notwithstanding the problems it faced in relation to breaching minimum employment standards through the failure to provide the pair with employment agreements.⁴ However, if accepted, both would have received significantly more than the penalty imposed and made payable to them rather than the Crown.

² Above n 1 at [25]

³ Reference was made to *Leota Lu v Childcare Ltd* [2022] NZERA 262, *MacGregor v Southern Fencing Limited* [2025] NZERA 209 and the court’s decision in *Coomer v JA McCallum and Sons Limited* [2017] NZEmpC at [43]

⁴ Employment Relations Act 2000, s 5 and s 64(4).

[12] Compliance with and enforcement of minimum employment standards is critical to the maintenance of a properly functioning employment relations system and labour market. Consequently, Cucina must reimburse Ms Lynch and Ms Crossley \$71.55 each, being the Authority's lodgement fee, within 14 days of the date of this determination.

Andrew Dallas
Chief of the Employment Relations Authority