

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 508  
3324120

BETWEEN	CHONGXUAN ZHANG Applicant
AND	MAYS PROPERTY DEVELOPMENT LIMITED First Respondent
AND	SI FENG Second Respondent

Member of Authority:	Eleanor Robinson
Representatives:	David Kim, advocate for the Applicant Fiona McMillan, counsel for the Respondent
Submissions received:	11 August 2025 from the Applicant 15 August 2025 from the Respondent
Determination:	21 August 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 22 July 2025 [[2025] NZERA 437] the Applicant, Chongxuan Zhang, was determined not to have been unjustifiably dismissed by, but to have been unjustifiably disadvantaged in his employment with, the Respondent, Mays Property Development Limited (MPDL).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and both parties have filed submissions in support of a costs application.

[3] The matter involved a one day investigation meeting.

[4] Mr Kim on behalf of Mr Zhang is claiming a contribution to costs at the notional daily tariff rate in the Authority of \$4,500.00. It is submitted that Mr Zhang was successful in one of his claims and that an award at the daily tariff amount achieves an appropriately modest result.

[5] Ms McMillan on behalf of MPDL, submits that costs should lie where they fall on the basis that MDPL successfully defended Mr Zhang's primary claim for unjustifiable constructive dismissal, which claim occupied the majority of the investigation meeting time.

[6] In the alternative she submits that if the Authority determines that Mr Zhang is entitled to costs, there should be a reduction to the daily tariff to account for MPDL's successful defence of Mr Zhang's primary claim for unjustifiable constructive dismissal.

### *Principles*

[7] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

#### **15 Power to award costs**

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[8] Costs are at the discretion of the Authority<sup>1</sup>. The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)*<sup>2</sup>.

[9] It is a principle set out in *Da Cruz* that costs are not to be used as a punishment. It is also a principle that costs are discretionary and awards made are consistent with the Authority's equity and good conscience jurisdiction.

### **Costs Award**

[10] This was a one day investigation so the starting point for costs assessed at the notional daily tariff in the Authority is \$4,500.00. In determination [2025] NZERA 437 both parties had, as observed, some degree of success, although MPDL was successful in defending the major claim of unjustifiable constructive dismissal.

[11] In *Coomer v JA McCallum and Son Ltd* the Employment Court observed that in these cases of mixed success, the Authority must: "stand back and look at things in the round"<sup>3</sup>. It is also important to note that Mr Zhang's, albeit limited, success could not have been achieved without filing a case in the Authority.

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<sup>1</sup> *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622

<sup>2</sup> *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808

<sup>3</sup> *Coomer v JA McCallum and Son Ltd* [2017] NZEmpC 156 at [43]

[12] The Employment Court has stated that mixed success is nevertheless success for the purposes of awarding costs, and I consider that Mr Zhang should receive a costs award.

[13] Ms McMillan submits that on the basis of the Employment Court decision in *Preece v Synlait Milk Ltd* there should be no order for costs.<sup>4</sup>

[14] I accept that in that case the Court ordered that there should be no costs. However *Preece* was a case involving a challenge on a preliminary issue. I find it can be distinguished from the present case which was a substantive determination in which Mr Zhang was successful in his claim of unjustifiable disadvantage.

[15] Notwithstanding that success, Mr Zhang was not successful in his primary claim of unjustifiable constructive dismissal. On that basis I consider that a reduced costs award is appropriate in all the circumstances.

[16] **I order MPDL to pay Mr Zhang the sum of \$2,000.00 as costs.**

**Eleanor Robinson**  
**Member of the Employment Relations Authority**

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<sup>4</sup> *Preece v Synlait Milk Limited* [2025] NZEmpC 53 at [7]