

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 67
3264759

BETWEEN	ELVIS-OTTO NGAN-WU Applicant
AND	GARAGE 10 AUTOMOTIVE LIMITED First Respondent
AND	JODY VINCENT Second Respondent

Member of Authority:	Sarah Blick
Representatives:	Simon Greening and Andrea de Stadler, counsel for the applicant No appearance for respondents
Investigation meeting:	On the papers
Submissions or information received:	10 February 2025 from the applicant None from the respondents
Determination:	14 February 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination on 31 January 2025 finding that Orange Service Centre Limited (in liquidation) and Garage 10 Automotive Limited (Garage 10) owed former employee Elvis-Otto Ngan-Wu arrears of overtime wages and holiday pay.¹ Orders were made requiring Garage 10 and the companies' director and shareholder, Jody Vincent, to pay the amounts owing along with interest.

[2] The respondents did not lodge statements of problem or engage in the Authority investigation in any meaningful way. Being satisfied the respondents were aware of

¹ *Ngan-Wu v Garage 10 Automotive Limited and Anor* [2025] NZERA 49.

the investigation meeting date and failed to attend, the Authority proceeded in the respondents' absence and determined the application.

[3] The issue of costs was reserved in the Authority's determination, and a timetable set for Mr Ngan-Wu to provide information regarding costs incurred and sought.

[4] Counsel has now lodged a brief memorandum addressing costs. It says Mr Ngan-Wu was legally aided and has incurred costs of \$2,889.95, which he seeks to recover.

Costs principles

[5] The Authority's power under to award costs is set out in clause 15 of Schedule 2 of the Employment Relations Act 2000 (the Act). The power is discretionary with its use governed by principles.² These include that costs will usually follow the event and the discretion is exercised in accordance with principle and not arbitrarily, considering equity and good conscience. When considering costs, the starting point is the Authority's daily tariff is \$4,500 for the first day of an investigation meeting.

Costs assessment

[6] Mr Ngan-Wu has been successful in his application and is entitled to costs.

[7] He has incurred legal aid costs of \$2,889.95. In addition to costs, Mr Ngan-Wu has incurred a disbursement of \$71.55 being the Authority application fee.

[8] The investigation meeting took under half a day, but further information was provided at the Authority's request, subsequent to the meeting. In the circumstances the appropriate starting point is half the daily tariff being \$2,250, with an uplift of \$250 for the additional attendances after the investigation meeting. Had the tariff and uplift exceeded the costs incurred, I would likely have awarded the full costs incurred. As they do not, the Authority finds a contribution to costs in accordance with the assessment is appropriate. Accordingly, \$2,500 should be awarded as costs.

² *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

Outcome

[9] Garage 10 Automotive Limited and Jody Vincent are jointly and severally liable to pay Elvis-Otto Ngan-Wu within 14 days of the date of this determination:

- (a) \$2,500 in costs; and
- (b) \$71.55 being the Authority application fee.

Sarah Blick
Member of the Employment Relations Authority