

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 778
3299000

BETWEEN YUE LU
Applicant

AND NEW ZEALAND NEWCAN
INTERNATIONAL LIMITED
Respondent

Member of Authority: Nicola Craig

Representatives: Aimee Cai, advocate for the applicant
Kevin Lin for the respondent

Submissions and other material received: 6, 7, 11, 19 and 20 November 2025 from the applicant
20 November 2025 from the respondent

Determination: 2 December 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority issued a 22 October 2025 determination (the first determination) in this matter.¹

[2] New Zealand Newcan International Ltd's unjustified action was found to have caused disadvantage to its employee Yue Lu and Mr Lu was awarded compensation of \$15,000.

[3] Costs were reserved with the parties encouraged to resolve any issue of costs between themselves. They have not done so and Mr Lu applies for costs. New Zealand Newcan International Ltd (NZNIL or the company) opposes that application.

¹ *Yue Lu v New Zealand Newcan International Limited* [2025] NZERA 668.

[4] Submissions and other documents have been provided on behalf of Mr Lu and NZNIL regarding costs.

Submissions for Mr Lu

[5] Mr Lu argues that as he was successful in establishing a personal grievance and was represented during the process, an award of costs should be made in his favour.

[6] An invoice for representation costs of \$15,237.50 (incl GST) was provided, along with an invoice from a translation service for \$437.00 (incl GST). Mr Lu seeks both those amounts.

[7] An increase above the three day tariff of \$11,500 is sought. This includes what is described as significant outreach to the Immigration Department, additional submissions and consultation with a licenced immigration advisor. The duration and complexity of the proceeding is also raised.

[8] The translation service fee is claimed for the witness statement and documents in the bundle of documents, including a phone recording, text exchanges and email exchanges. Although reference is made to consistent efforts to resolve the matter through settlement, no without prejudice save as to costs (*Calderbank*) offers are provided to the Authority.

Submissions for NZNIL

[9] NZNIL argues that it was the substantially successful party in this proceeding - most of Mr Lu's claims were unsuccessful and, via the Authority's award, he only received 18% of the total claimed financial value.

[10] As the company successfully defended over 80% of the total financial claim value, it says it should be entitled to claim an equivalent proportion of the notional tariff of \$11,500. Thus NZNIL seeks 82% of \$11,500 – being \$9,430.00.

[11] NZNIL opposes the increased costs Mr Lu seeks above the tariff. It regards the complexity and duration as directly attributable to his own conduct, unnecessarily increasing both parties' costs, with a downwards adjustment justified by:

- the unwarranted delay from Mr Lu's failure to contact the company during the June to November 2023 period

- procedural failings in not providing complete and critical information during the process, forcing NZNIL to seek orders that documents be provided, delaying the process
- providing an unsworn affidavit from a new witness in submissions in reply, a procedural irregularity.

[12] A downward adjustment is argued to be warranted from the tariff rate as a result. NZNIL also seeks a set off between the compensation sum of \$15,000 payable for the grievance and the amount of costs it seeks, namely \$9,430. This is argued on the basis of a risk of irrecoverability with Mr Lu based permanently offshore and NZNIL reserving its challenge rights to the Employment Court regarding the first determination.

Costs principles

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

- 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

Costs discussion

[14] The starting point is setting the notional daily tariff amount.

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

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

[15] The hearing ran over three days, with submissions provided after the meeting. At \$4,500 for the first day and \$3,500 for each of the subsequent days, this gives a tariff of \$11,500.

[16] As NZNIL points out, an award of \$15,237.50, as sought by Mr Lu, would effectively amount to an award of indemnity costs, being full payment of actual costs, as that amount is the amount invoiced. The tests for an award of indemnity costs are high, requiring exceptional conduct.⁴ There is nothing of that nature established here.

[17] I note NZNIL has provided no proof of having spent money on advice defending itself in this matter. Mr Lin as company director represented the company through the Authority's process, including at the investigation meeting.

[18] In any event, while Mr Lu did not succeed in establishing all the claims he brought, he did succeed in that the Authority upheld that he had a personal grievance and he was awarded a not insignificant amount of compensation for that grievance. As has been pointed out - "...success on more limited terms is still success".⁵

[19] In the absence of proof of *Calderbank* offers being made, there is no way Mr Lu could have achieved that amount of compensation other than through proceeding in the Authority. But that absence also means no increase to the tariff can be justified on the basis of settlement being pursued.

[20] An award of costs to Mr Lu is warranted as he succeeded in establishing a grievance. Although there was some complexity in this matter, no more so than is reflected in the tariff for a three day investigation meeting. Mr Lu's delay in contacting the company after arriving in New Zealand is not a factor which should be taken into account in the costs assessment. The decision to lodge an unsworn affidavit by a new witness with reply submissions was unfortunate but does not warrant a downwards movement from the tariff as the difference between the tariff and the higher invoice rate would more than likely cover that work. No other basis for a decrease is established.

[21] Mr Lu should receive the tariff and is also entitled to be reimbursed for the translation fee and the Authority's filing fee.

⁴ *Bradbury v Westpac Banking Corp* [2009] NZCA 234 at [28].

⁵ *Coomer v JA McCallum and Son Ltd* [2017] NZEmpC 156 at [37], quoting from *Weaver v Auckland Council* [2017] NZCA 330.

[22] For the sake of completeness I note that no order is made changing the date of payment due under the first determination.⁶

Orders

[23] In conclusion New Zealand Newcan International Ltd is to pay Yue Lu the following amounts within 28 days of the date of this determination:

- \$11,500.00 as a contribution to his costs;
- \$437.00 for the translation fee; and
- \$71.56 for the Authority's filing fee.

Nicola Craig
Member of the Employment Relations Authority

⁶ *Yue Lu v New Zealand Newcan International Limited* [2025] NZERA 668.