

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 134
3328840

BETWEEN	YATONG ZHANG Applicant
AND	NEW CONCEPT CONSULTING COMPANY LIMITED First Respondent
AND	YUNE ZHANG Second Respondent
AND	ZHANGRUIYI LIU Third Respondent

Member of Authority:	Helen van Druten
Representatives:	No appearance for the Applicant Lion Yang, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	No submissions from the Applicant Up to 5 February 2026 from the Respondent
Determination:	5 March 2026

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Authority issued a determination on 4 December 2025 which declined Ms Yatong Zhang’s personal grievance claims of unjustified dismissal and unjustified disadvantage, and her claim for a breach of s 12A of the Wages Protection Act 1983.¹

¹ *Zhang v New Concept Consulting Ltd & Ors* [2025] NZERA 785.

[2] New Concept Consulting Ltd (NCC) has now filed a memorandum on costs within the set timetable. It advised that the parties were unable to resolve the issue of costs as Mr Kim was no longer representing Ms Zhang.

[3] The application for costs was received by the Authority on 11 December 2025. On 8 January 2026, Mr Kim advised the Authority that he was no longer representing Ms Zhang, “the applicant is in China and we have no idea about her contact details at all”. To ensure service was affected, Mr Yang was asked to consult with NCC and provide any contact details for Ms Zhang held by them. A copy of the cost memorandum was sent to the email address for Ms Zhang held by the Company and Mr Kim was also sent the costs memoranda (being Ms Zhang’s last recorded address for service).

[4] The timeframe for providing any reply to the costs memorandum was extended by a further 15 days to ensure Ms Zhang had adequate opportunity to reply if she wished to do so.

[5] Ms Zhang did not provide any response. I am satisfied that all reasonable attempts to effect service are made and a costs determination from the Authority is required.

Costs submission

[6] In a brief submission, NCC seeks costs of \$4,500 based on the Authority’s normal daily tariff approach. It further seeks an uplift of 50 per cent of that amount on the basis of a Calderbank offer made and not accepted by Ms Zhang.

[7] This matter was determined on the papers. NCC submit that even though there was no investigation meeting, the preparation of material submitted to the Authority was at least equivalent to that ordinarily expended in preparing for an investigation meeting.

[8] Mr Yang provided invoices in support of legal costs incurred.

Assessment

The Authority's costs approach

[9] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000.

[10] The Court has also set down key principles for the award of costs by the Authority.² The Authority's discretion must be exercised in accordance with principle and not arbitrarily and consistent with the equity and good conscience jurisdiction of the Authority.

Applying the daily rate

[11] The Authority's general approach is to apply a notional daily rate and only adjust that rate if persuaded that circumstances or other factors require an upward or downward adjustment.³ The current full daily rate is \$4,500 for the first day of an investigation meeting.

[12] Mr Yang says he put equivalent toil into his preparation for this on the papers investigation as he would have done for an in-person meeting. The significant difference is that the investigation meeting time is not required where the matter is determined on the papers. Accordingly, I consider that half of the daily tariff should apply as a starting point.

Adjusting the daily rate

[13] It is appropriate to consider whether there are any factors that may warrant an adjustment to the daily rate. Ms Zhang did not provide any information to the Authority to consider in that regard. Ms Zhang's financial situation is unknown. There is no evidence that Ms Zhang or her representative engaged in any conduct during the investigation and determination of this matter that sought to increase costs for NCC.

[14] One accepted basis for adjusting the daily tariff is where there has been an open offer or Calderbank offer from one party that has been unreasonably rejected by the

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

³For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

other and the rejecting party did not achieve a better result than the offer in the subsequent determination.⁴

[15] The purpose of a Calderbank offer is to not only to attempt to settle a claim but to allow the offering party to bring it to the Court's (or in this case the Authority's) attention as a genuine, albeit unsuccessful, attempt to resolve the matter between the parties. If the claim is not settled, the offer can be used for assessing costs once the claim has been determined.

[16] NCC made a Calderbank offer on 27 September 2024 as a lump sum payment for full and final settlement of all matters. It provided a copy of that offer and associated documents. The offer was a valid Calderbank offer, containing the words "without prejudice, except as to costs". Ms Zhang declined the offer on 30 September 2024 without any explanation and Ms Zhang's claims were unsuccessful, so I cannot conclude that the rejection was reasonable.

[17] I consider that the Calderbank offer should be accorded weight in determining the level of a costs award. The offer was materially better than the outcome achieved by Ms Zhang and was made soon after the matter was filed with the Authority and before significant costs were incurred in 2024.

Conclusion

[18] Having considered the valid Calderbank offer declined by Ms Zhang, I do agree that an uplift of 50 per cent of the start amount is appropriate.

Orders

[19] Ms Zhang is to pay NCC a contribution to its legal costs of \$3,375.00 (being half the daily tariff and an uplift of 50 per cent of that amount) within 28 days of this determination being issued.

Helen van Druten
Member of the Employment Relations Authority

⁴ *Lazaro v Waimea Contract Carriers Ltd* [2025] NZERA 573 at [15].