

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-A-TARA ROHE**

[2026] NZERA 169  
3338280

BETWEEN	YUANXIANG YANG First Applicant
AND	WEJUAN YANG Second Applicant
AND	KIPPERS EAST LIMITED First Respondent
AND	WEIWEN RAYMOND SU Second Respondent

Member of Authority:	Claire English
Representatives:	Athena Wu, advocate for the Applicants Raymond Su, for the Respondents
Submissions received:	8 December 2025 from Applicant 20 January 2026 from Respondent
Determination:	23 March 2026

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] On 27 November 2025, the Authority issued a determination in this matter, making various awards and penalties in favour of the applicants.

[2] In that determination, the parties were encouraged to resolve any issue of costs between them. The Authority made reference to its usual practice of applying the daily tariff to determine costs, and I expressed an initial view that this was a matter where tariff costs would be appropriate. In the event, the parties have not been able to resolve costs between themselves, and although further time was allowed, they have now filed memoranda with the applicants seeking an award of costs.

[3] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500 for the first day of hearing, and \$3,500 for subsequent hearing days<sup>1</sup>.

[4] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[5] The investigation meeting in this matter was for two days, and was held in person. The applicants attended together with their representative, and Mr Su and Ms Peng, the owner-operators of the first respondent business, appeared for the respondents. A translator was also present. I record that all parties engaged with the Authority's process in constructive way.

[6] In the present case, the applicants seek a costs award of \$10,000 plus the reimbursement of the Authority's filing fee. The respondents submit that no costs should be awarded other than the reimbursement of the filing fee, or alternatively that "any contribution to costs should be modest and materially below the amount claimed by the applicants".

## **Principles**

[7] The power of the Authority to award costs is contained in s 15 of schedule 2 of the Employment Relations Act 2000 (the Act). The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*<sup>2</sup> as confirmed in *Fagotti v Acme and Co Limited*<sup>3</sup>, namely that costs are to be modest. As to quantification, the principle is one of a reasonable contribution to costs actually and reasonably incurred. Costs are not to be used as a punishment or expression of disapproval of the unsuccessful parties conduct.

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<sup>1</sup> For further information about the factors considered in assessing costs, see: <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

<sup>2</sup> [2005] 1 ERNZ 808.

<sup>3</sup> [2015] NZEmpC 135 at 114.

[8] Costs are to follow the event. In this case, the applicants were the successful party. Therefore, they are entitled to a contribution to their costs, and to the reimbursement of their filing fee.

[9] The next question is to consider the appropriate starting point for such a contribution to costs. The investigation meeting took place over two days. The Authority's daily tariff for a two-day meeting amounts to \$8,000. My view is that this is and remains the appropriate starting point.

[10] I have considered the submission on the part of the respondents that no costs should be awarded, and I do not consider this is such a matter. The dispute involved personal grievance claims, and claims for wages and holiday entitlements, which were disputed. Such matters ordinarily attract costs awards. The respondents have submitted that the applicants were represented by an employment advocate, and on a "no win, no fee basis" which should disentitle the applicants from receiving costs. However, it is well established that applicants represented by advocates as well as lawyers may claim for costs, and in the present case, the applicants each provided invoices demonstrating fees charged that exceed the amount claimed as a contribution to costs. All of this suggests that a contribution to costs remains appropriate.

[11] The applicants have sought an uplift from the daily tariff of \$2,000, or 25%, on the basis of a Calderbank offer, made on behalf of each applicant. The settlement amount offered in relation to Mr Yang was some \$8,000 more than awarded by the Authority, and the amount offered in relation to Mrs Yang was some \$1,000 less than awarded by the Authority. On balance, I am not persuaded that the respondents acted unreasonably in declining this offer, especially given they were unrepresented. Nor am I persuaded that declining this offer in all the circumstances is sufficient to justify an uplift to the usual tariff.

[12] Standing back and considering the matter, including the conduct of the all parties to which I have already referred, I take the view that an award of costs at the rate of the daily tariff remains appropriate.

## **Orders**

[13] Kippers East Limited is ordered to pay to Mrs Wenjuan Yang and Mr Yuanxiang Yang jointly and severally within 28 days of the date of this determination

the sum of \$8,000.000 (inclusive) as a contribution to costs, plus the sum of \$71.55 as the reimbursement of the filing fee.

Claire English  
Member of the Employment Relations Authority