

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 175
3165881

BETWEEN	FREEDOM TRADES LIMITED (TRADING AS FREEDOM) Applicant
AND	YIQUAN NOEL JIAN First Respondent
	XUBEN TRADING LIMITED Second Respondent

Member of Authority:	Marija Urlich
Representatives:	Ashley Sharp, counsel for the Applicant May Moncur, advocate for the Respondents
Investigation Meeting:	On the papers
Submissions and further information received:	24 December 2025, from the Applicant 6 December 2025, from the Respondents
Determination:	25 March 2026

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority issued a determination on 5 December 2025 which found Ms Jian had breached obligations owed to Freedom Trades Limited (Freedom) under the terms of her employment agreement.¹ She was ordered to pay Freedom legal fees incurred in respect of injunction proceedings and a penalty. The claim against Xuben Trading Limited for aiding and abetting Ms Jian's breaches of employment agreement was unsuccessful. Costs were reserved and a timetable set if the parties were unable to resolve this issue themselves.

¹ *Freedom Trades Limited (trading as Freedom) v Yiquan Noel Jian & Xuben Trading Limited* [2025] NZERA 788.

[2] The parties have filed memoranda in accordance with the timetable.

Costs principles

[3] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs 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 judged against a notional daily tariff.

[4] Clause 16.1 of Ms Jian's employment agreement is relevant because it provides for the cost of reasonable legal fees to be met by Mr Jian in the event she has been found to have breached the employment agreement. That this would likely be a factor considered by the Authority in a costs setting was foreshadowed to the parties in the substantive determination.²

Freedom's position on costs

[5] Freedom has incurred costs of representation of \$54,036 (excluding GST) supported by relevant information including invoices and detailed log/attendance record for the relevant period. It seeks an award of indemnity costs against Ms Jian:

- the Authority found Ms Jian agreed to the clause in the employment agreement which provides she agrees to pay reasonable attorney fees incurred in relation to breach by her of the employment agreement;³

² N1 [55].

³ N1 [47] – [50].

- the clause is enforceable because Ms Jian has been found to have breached her employment agreement, that those breaches were serious and sustained and costs have been incurred in seeking to enforce the terms of the parties' employment agreement;
- the investigation meeting took five investigation meeting days;
- significant time was taken in preparation and investigation meeting time due to the complexity of the matter and the supporting information;
- costs were increased because it was necessary that Freedom respond to insinuations made by Mr Jian and Torya (a second respondent until its removal from the companies' office registry) against Freedom and its officers that Freedom:
 - was motivated to bring the proceedings from a desire to secure a sole agency agreement; and
 - engaged in fraudulent and/or unlawful conduct, exploited foreign based workers and was indifferent to health and safety; and
- its costs were further increased because Ms Jian was not forthcoming about her involvement with Torya which required Freedom to issue witness summons for a freight forwarding agent and preparation and attendance at the investigation meeting held to deal with that information.

[6] In respect of Xuben Trading Limited, Freedom says no costs award should be made in its favour because:

- there is no evidence it has incurred any costs;
- it has not filed a statement in reply, witness statements or documents; and
- there can be no de facto costs award in favour of Torya because that entity no longer exists.

Ms Jian and Xuben Trading Limited's position on costs

[7] Ms Jian submits:

- Freedom's damages claim was not removed until late in the investigation process;
- the basis of its claims were not ultimately upheld;
- Ms Jian has had substantial orders made against her;

- \$8,000 would be a reasonable contribution to Freedom's costs.

[8] Xuben Trading Limited submits an award of \$18,500 based on tariff costs would be reasonable.

Costs analysis

[9] Freedom's claim against Mr Jian was successful and it is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party's costs. The matter determined by the Authority was the breach claim because damages were proposed to be dealt with after liability was determined and then withdrawn.

[10] As is usual with Authority matters the starting point for assessing costs is the notional daily tariff. The applicable daily tariff is \$4,500 with each subsequent day at \$3,500. This matter involved in the round five full hearing days. The starting point for assessing this costs award is \$18,500.

Indemnity costs

[11] The Authority has jurisdiction to award indemnity costs, but such awards are exceptional and rarely sought.⁴ This is not a matter where the unsuccessful party had been told by the Authority from the outset that its defence had no prospect of success, where a *Calderbank* offer had been made or a settlement agreement entered which was relevant to the assessment of costs. The parties' agreement as to costs recovery in the event of breach must, as they agreed, be assessed through the lens of reasonableness and given the Authority's longstanding tariff-based approach to costs this must properly be part of any assessment of reasonableness.

[12] Freedom's claim for indemnity costs is declined. An award of indemnity costs would be out of alignment with the approach the Authority has taken in previous matters where indemnity costs were sought. In the wider context of a tariff-based approach to costs the parties' agreement must be read down to accommodate that known and consistent approach.

⁴ Refer *Key Industries Limited v Campbell Perrin* [2023] NZERA 172 which contains a comprehensive analysis of the Authority's approach to indemnity costs.

Conduct increased costs?

[13] Ms Jian's conduct has unreasonably increased Freedom's actual legal costs over the investigation of this employment relationship problem. Additional costs were incurred by Freedom in regard to evidence of the freight forwarding business matters which were within Ms Jian's direct knowledge, were within the known scope of matters under investigation and which she had not disclosed despite having had the opportunity to do so by way of affidavit. On review of Freedom's legal invoices, it is reasonable to say a sum equivalent to a subsequent day of tariff costs, being \$3,500 was incurred.

[14] The other matters Freedom raises to support an increase in costs award were, though it is accepted unpleasant and personalised have not unduly increased costs. The matters have been found to be unsupported by any convincing evidence and disposed of accordingly.

Xuben Trading Limited

[15] There is no information before the Authority that Xuben Trading Limited has incurred any costs of professional representation in respect of this matter. It is fundamental to a costs award that costs have been incurred. The memorandum 6 December 2025 does not state that Xuben Trading Limited has incurred any costs and no supporting information has been provided that it has. It was on notice that such information would be required to support any costs claim.⁵

Outcome

[16] A fair costs award, given all the relevant circumstances is in Freedom Trades Limited favour and Yiquan Noel Jian is to pay it \$22,000 plus reimbursement of the filing fee of \$71.55 within 21 days of date of determination.

Marija Urlich
Member of the Employment Relations Authority

⁵ Refer Authority practice direction February 2024.