

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 186
3302180

BETWEEN	YANG (HELEN) FENG Applicant
AND	DONG CONSTRUCTION LIMITED First Respondent
AND	DONG WANG Second Respondent

Member of Authority: Rachel Larmer

Representatives: May Moncur, advocate for the Applicant
Dong Wang, for the Respondents

Investigation: On the papers

Submissions Received: 9 and 24 March 2026 from the Applicant
9 March 2026 from the Respondent

Date of Determination: 27 March 2026

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Ms Yang (Helen) Feng, was previously employed by the first respondent, Dong Construction Limited (Dong Construction). The second respondent, Mr Dong Wang, is the sole director and shareholder of Dong Construction.

The Authority's investigation

[2] A one-day in-person investigation meeting was held in Auckland. The Authority was assisted by a Mandarin interpreter.

[3] Ms Feng was the successful party because she succeeded on all of her claims apart from the premium claim that alleged the respondents had breached s 12A of the Wages Protection Act 1983 (the WPA) by seeking and receiving a premium in return for employing her.

[4] The Authority made the following findings in its substantive determination dated 5 March 2026:¹

- (a) Ms Feng's premium claims under the WPA against the respondents did not succeed.
- (b) Dong Construction breached Ms Feng's employment agreement and its good faith obligations in s 4 of the Employment Relations Act 2000 (the Act) to her by failing to provide her with any work and/or wages from 8 January 2024 to 11 March 2024 when she was ready, willing and available to work.
- (c) A globalised penalty of \$1,000.00 was imposed on Dong Construction for its breaches of Ms Feng's employment agreement and of its good faith obligations.
- (d) A penalty of \$500.00 was imposed on Mr Wang personally under s 134(2) of the Act for aiding and abetting Dong Construction's breaches of Ms Feng's employment agreement.
- (e) Dong Construction engaged in multiple breaches of employment standards, as defined in s 5 of the Act. Mr Wang was 'a personal involved in those breaches of employment standards', as defined by s 142W of the Act.
- (f) Ms Feng was given leave under s 142Y of the Act to recover from Mr Wang personally any part of the \$13,799.70 wage arrears and ongoing interest she was awarded by the Authority that Dong Construction defaults on paying her.
- (g) The trial period provision in Ms Feng's employment agreement was held to be invalid.
- (h) Dong Construction unjustifiably dismissed Ms Feng and it was ordered within 28 days of the substantive determination to pay her \$32,299.70, consisting of wage arrears, interest and distress compensation. Ongoing interest was also awarded to Ms Feng.

¹ *Feng v Dong Construction Ltd and Wang* [2025] NZERA 132 at [132].

[5] The parties were encouraged to resolve costs by agreement. However, costs have not been agreed.

[6] The respondents lodged a challenge to the Authority's determination. The respondents therefore submitted that a costs determination is premature, and said costs should not be determined until the outcome of their challenge was known.

[7] That submission was not accepted. A challenge does not operate as a stay. The Authority's usual process is to complete its investigation and close its file, with determining costs (if need be) being a normal part of the Authority's investigation process. The lodging of a challenge is not a reason to deprive Ms Feng of an award of costs in her favour.

[8] As the successful party, Ms Feng has applied for a costs order of \$4,500.00 plus an unspecified uplift in her favour.

The Authority's investigation

[9] Costs were determined 'on the papers'.

[10] Ms Feng provided a GST invoice as proof of the legal costs she has actually incurred. These amounted to \$12,146.55 including GST and the filing fee.

[11] The Authority's notional starting tariff is \$4,500.00 for the first day of an investigation meeting. The investigation of Ms Feng's substantive claims involved a one day in-person investigation meeting, so that was the appropriate starting point for assessing costs in this matter.

[12] Ms Feng has incurred actual legal costs in excess of the notional daily tariff of \$4,500.00.

[13] Both parties lodged costs submissions.

Legal position

[14] The Authority derives its power to award costs from clause 15 of Schedule 2 of the Act. Costs are discretionary, with the discretion to be exercised by the Authority on a principled basis. Costs must not be used to punish a party, or to express disapproval of a party's conduct, unless that conduct had increased the other party's actual legal costs unnecessarily.

[15] Conduct by one party that has unreasonably increased the other party's actual legal costs may be reflected in the amount of costs awarded.²

[16] The Authority usually adopts a notional daily tariff based approach to costs. The current tariff is \$4,500.00 for the first day of an investigation meeting and \$3,500.00 for each subsequent day. The notional starting tariff is then adjusted to reflect the particular circumstances of each case.

[17] When assessing costs in this matter the Authority has had regard to the costs assessment principles identified by the Employment Court in *PBO Limited (formerly Rush Security Limited) v Da Cruz* and *Fagotti v Acme & Co. Limited*.³

Issues to be determined

[18] Ms Feng, as the successful party, is entitled to a contribution towards her actual costs and disbursements. The only issue is whether the notional daily tariff of \$4,500.00 should be adjusted in this matter.

Should the notional starting tariff be reduced?

[19] Ms Feng did not succeed on her premium claims which took up approximately half of the Authority's investigation meeting time. It was therefore appropriate to reduce the notional starting tariff by \$2,250.00 to reflect that lack of success on all of her claims.

Should the notional starting tariff be increased?

[20] The respondents opposed any uplift being made to the notional starting tariff. They also said that any costs to be awarded should be modest.

[21] Ms Feng relied on issues she said had occurred with mediation. However, costs cannot be awarded for mediation, so those issues have been put to aside. Ms Feng also submitted substantial preparation work was required which included translation of Chinese evidence into English. That was not an appropriate reason to grant an uplift to the notional starting tariff, which has been set to take such matters into account.

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

³ *PBO* above n1, and *Fagotti v Acme & Co. Limited* [2015] NZEmpC 135.

[22] The Authority considered this case involved the normal level of preparation and evidence expected for a matter involving these types of claims, so it was not unusual or out of the ordinary. Accordingly, the Authority did not consider there were any grounds that warranted an uplift being made to the notional starting tariff.

What costs and disbursements should be awarded?

[23] Ms Feng is entitled to a contribution of \$2,250.00 towards her actual legal costs. She is also entitled to be reimbursed \$71.55 for her filing fee.

Outcome

[24] Within 28 days of the date of this determination, the respondents on a joint and several liability basis, are ordered to pay Ms Feng \$2,321.55 costs and disbursements.

Rachel Larmer
Member of the Employment Relations Authority