

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 80
3359983

BETWEEN	SHENWEI ZHANG Applicant
AND	FAT DRAGON RESTAURANT MANAGEMENT LIMITED First Respondent
	KEJIAN JI Second Respondent

Member of Authority:	Marija Urlich
Representatives:	John Wood, advocate for the Applicant Kejian Ji, representative for the first respondent and in person
Investigation Meeting:	On the papers
Submissions and information received:	26 November 2025, from the Applicant 23 December 2025, from the Respondents
Determination:	16 February 2026

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority issued a determination on 14 November 2025 which found Mr Zhang had established a personal grievance for unjustified dismissal and awarded compensatory remedies.¹ An order for wage and holiday pay arrears was also made in his favour. Costs were reserved and a timetable set if the parties were unable to resolve this issue themselves which they advise has not been possible.

¹ *Shenwei Zhang v Fat Dragon Restaurant Management Limited & Anor* [2025] NZERA 525.

[2] The parties have filed memoranda in accordance with a varied 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.

Mr Zhang's claim for costs

[4] Mr Zhang has incurred total costs of representation of \$9,201.15 (including GST) supported by relevant information including an invoice. He submits a costs award of \$7,250.00 is warranted given:

- he was the successful party and costs should follow the event;
- the investigation meeting took a full hearing day which was reasonable given the factual matters for the personal grievances and wage arrears claim;
- grounds for an increase of the daily tariff are made out:
 - written submissions were filed after the investigation meeting; and
 - a valid without prejudice save as to costs order was made;

Fat Dragon's position on costs

[5] Fat Dragon and Mr Ji submit:

- a costs award in favour of Mr Zhang is opposed;

- if the Authority is minded to make a costs award the amount should be reduced significantly from that sought and be a modest amount;
- there is no basis to award an increase in the tariff:
 - the employment relationship problem involved genuine disputes as to legal and factual matters;
 - there was no conduct of the respondents which unreasonably increased party costs for example the respondents complied with all Authority directions;
 - given the level of costs incurred by the applicant a near indemnity award is sought;
- the without prejudice save as to costs offer made by Mr Zhang on 26 June 2025 is not a reasonable basis to increase costs because the parties were genuinely in dispute;
- the costs sought by Mr Zhang are relatively high given the nature of the employment relationship problem; and
- the Authority determination is under challenge and caution should be exercised in determining costs at this stage.

[6] No costs award is sought by Mr Ji.

Costs analysis

[7] Mr Zhang was the successful party 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.

[8] 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 a full hearing day – the first day started after the scheduled start time due to party lateness and required one hour of hearing time on the following day. The starting point for assessing this costs award is \$4,500.

[9] The total cost of representation Mr Zhang has incurred is reasonable particularly given the range and complexity of matters for resolution which included a personal grievance and analysis of significant documentation to determine employee status and wage calculation including over the Covid period. A decrease in the tariff is not

warranted because of these factors which indicate the level of costs Mr Zhang has incurred are reasonable.

[10] Mr Zhang made a without prejudice save as to costs offer to the respondents on 25 June 2025. It was made to the respondents' then legal representative on a without prejudice save as to costs basis, its terms were clear including that if it was not accepted and Mr Zhang was awarded an equivalent or more than proposed it would be presented to the Authority. The time to consider the offer was reasonable given it was made to counsel and was within the timetabling envelop for the respondents to, if accepted, have avoided the costs of filing its evidence. The settlement offer sum, had been accepted it is less than the total sum awarded to Mr Zhang by the Authority (less costs contribution). This was a valid settlement offer which warrants an increase in the starting point for costs.

[11] A steely approach is to be taken to setting costs where a valid settlement offer has been made. The respondents would have been better off in accepting Mr Zhang's settlement offer given his substantive claims were upheld and the level of award made in his favour. Given this and balanced with other relevant factors an increase of \$1,200 is warranted. Mr Zhang is also entitled to reimbursement of the filing fee of \$71.55.

[12] A fair costs award, given all the relevant circumstances is in Mr Zhang's favour and is \$5,700 plus reimbursement of the filing fee of \$71.55.

Marija Urlich
Member of the Employment Relations Authority