

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 707
3320520

BETWEEN	SUNHO CHOI Applicant
AND	EURO PROPERTY SERVICES LIMITED Respondent

Member of Authority:	Marija Urlich
Representatives:	Michael Kim, counsel for the Applicant Endijs Heinrihsons, representative for the Respondent
Investigation Meeting:	On the papers
Submissions and information received:	14 and 31 October 2025, from the Applicant 29, 30 and 31 October 2025, from the Respondent
Determination:	3 November 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority issued a determination on 27 August 2025 which found Mr Choi had established a personal grievance for unjustified disadvantage 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 *Sunho Choi v Euro Property Services Limited* [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 Choi's claim for costs

[4] Mr Choi is in receipt of legal aid. In support of his claim for costs he has provided three detailed invoices – the first dated 22 August 2024 totals \$1,581.25 and appears to deal with matters before the application was lodged in the Authority, the second is dated 7 May 2025 totals \$3,494.85 and relates to the matter before the Authority and the third is dated 30 October 2025 totals \$813.05 and again relates to the matter before the Authority including activities related to the costs application which totals \$210. He submits a costs award based on tariff is warranted given:

- he was the successful party and costs should follow the event;
- he was substantially successful in his claims including significant matters relating to the correct hourly rate of pay and unpaid wage over a significant period of time; and
- the investigation meeting required two hearing which was reasonable given the factual matters for the personal grievances substantially overlapped.

EPS's position on costs

[5] EPS submits:

- Mr Choi was successful in only a portion of his claims, less than 50%, and the unsuccessful matters including the claim of unjustified constructive dismissal claim took up substantial investigation meeting time;
- any award of costs should be reduced to reflect Mr Choi's limited success;
- the investigation meeting involved two half days;
- Mr Choi has incurred no personal costs because he was legally aided;
- the attempts to settle costs made on behalf of Mr Choi were unclear and confusing;
- reasonable maximum costs for Mr Choi would be no more than \$2,270; and
- given EPS has incurred costs of \$9,004 in preparation and staff time, it is reasonable to set off any costs award in favour of Mr Choi giving a balance in favour of EPS.

Costs analysis

[6] Mr Choi 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. Mr Choi was legally aided. He is not prevented from seeking a contribution to those costs and indeed it is proper he do so to contribute to the legal aid support he has received.

[7] The supporting invoice includes attendance at mediation and pre-lodgement activities totalling \$813.50. Mediation costs are not usually awarded in costs and a basis to award costs for that attendance and other matters described in the invoice as pre-proceeding is not established. Likewise, costs incurred in relation to costs applications are not usually reimbursable. A basis for the \$290 incurred for such is not established. The costs of representative incurred by Mr Choi, excluding pre-proceeding activities including mediation and activities associated with costs, totals \$4,017.90.

[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. While this matter involved, on balance two days of investigation meeting Mr Choi has incurred a modest level of costs and any award of costs should not result in a wind fall. A decrease in the notional daily rate is required.

[9] EPS has referred to communications between the parties to resolve costs. Such communications relevant to a costs determination usually involve settlement offers made on a without prejudice offer save as to costs basis. There are no valid offers of that nature before the Authority to consider. The concerns EPS raises are that the basis of the costs claimed in those discussions by Mr Choi were unclear. Those issues, including matters for which clarification is sought, are now before the Authority to determine. The communications EPS seeks to rely on are not of a category relevant to matters before the Authority in a costs setting.

[10] There is no basis for a 'set off' as claimed by EPS. The factual basis of the entire employment relationship problem Mr Choi brought before the Authority was substantially intertwined and he achieved significant success in establishing that factual basis.

[11] A fair costs award, given all the relevant circumstances is in Mr Choi's favour and is \$3,800 plus reimbursement of the filing fee of \$71.55. This is to be paid within 21 days of the date of this determination.

Payment by instalments

[12] Sections 123(2) and 131(1A) of the Act provides the Authority may order remedies awarded to settle a personal grievance and arrears be paid by instalment to the employee if the employer's financial position so requires.

[13] EPS has provided information that due to its financial position it can pay Mr Choi instalments of no more than \$250 per week or \$1,000 per month. Mr Choi opposes the payment instalment and seeks a certificate of determination because, he advises, he intends to enforce the substantive order through the District Court.

[14] There are two issues for consideration – first whether the financial position of EPS requires an order for instalment, the second, whether an order should be made that the awards made in favour of Mr Choi should be paid by instalment of \$250 per week or \$1,000 per month.

[15] It is accepted EPS is facing difficult trading circumstances and an instalment order would provide some relief to the financial pressure facing the business. However, the information provided is not a complete picture of EPS's current financial position, and it is not clear how it reached the view that \$250 per week or \$1,000 per month is affordable. The awards made in Mr Choi's favour include wage and holiday pay arrears. The information before the Authority suggests to date EPS has made no payment to Mr Choi of the orders in his favour. At the proposed rate it will take EPS just over 2 and a half years to pay Mr Choi the total ordered in his favour. Having considered all the relevant factors, I am not persuaded the instalment payment order sought from the Authority is justified. This does not preclude the parties reaching an agreement as to a payment schedule.

Outcome

[16] Within 21 days of date of determination Euro Property Services Limited is to pay Sunho Choi \$3,800 as a contribution to costs reasonable incurred plus reimburse the filing fee of \$71.55.

[17] The order sought by Euro Property services Limited to pay all awards by instalment is declined.

[18] A certificate of determination is to be immediately issued.

Marija Urlich
Member of the Employment Relations Authority