

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 564  
3208079  
3296299

BETWEEN

WEI HU  
Applicant

AND

BESTBASE  
CONSTRUCTION GROUP  
LIMITED  
Respondent

Member of Authority: Nicola Craig

Representatives: The applicant in person  
No appearance for the respondent

Investigation Meeting: On the papers

Submissions and further information received: 20 August and 3 September 2024 from the applicant  
Nothing received from the respondent

Determination: 23 September 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Wei Hu worked for Bestbase Construction Group Limited (Bestbase or the company). The Authority determined that Bestbase had breached several statutory obligations with a \$9,000 penalty imposed and had unjustifiably dismissed Mr Hu, granting him remedies (the first determination, file 3208079).<sup>1</sup>

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<sup>1</sup> *Wei Hu v Bestbase Construction Group Ltd* [2024] NZERA 202.

[2] Mr Hu returns to the Authority in file 3296299 saying he has not been paid any of the amounts awarded and seeking a compliance order along with an order of costs on the first determination.

[3] Bestbase's position is not known as it has not been involved in the latest application.

### **The Authority's process**

[4] A case management conference was held on 6 August 2024. No contact was able to be made with Bestbase or its director Xigou Hou. As was foreshadowed in the letter setting up the conference, a decision was made to proceed with the conference. The Authority was assisted by an interpreter of the Mandarin language. It was agreed that the outstanding matters could be dealt with on the papers.

[5] The first determination encouraged the parties to resolve any issue of costs between themselves and if they could not, a timetable was set for the filing of submissions.<sup>2</sup>

[6] The Authority has the power to amend or waive any error or defect in proceedings and extend the time for things to be done.<sup>3</sup>

[7] I took Mr Hu to be seeking to apply for costs out of time regarding the first determination.<sup>4</sup> He has limited English and the statement of problem on file 3296299, which refers to costs, was lodged days after his costs submissions should have been filed. There is no evidence of prejudice to Bestbase. Mr Hu's time to make the costs application was extended.

[8] At the conference I indicated I intended to deal with this costs issue regarding the first determination in the same determination as the compliance order application. This means any compliance order will not cover any costs order made at the same time. However, if any costs order is not paid within the specified time, Mr Hu may return for a compliance order on such costs order.

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<sup>2</sup> *We Hu v Bestbase Construction Group Ltd* [2024] NZERA 202 at [163] – [165].

<sup>3</sup> Employment Relations Act 2000, s 221(b) and (c).

<sup>4</sup> On file 3208079.

[9] I am satisfied that Bestbase and its director Mr Hou have been served with both the statement of problem and the notice of directions of the Authority and have had the opportunity to provide a response to Mr Hu's current claims. Nothing was received.

[10] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination does not record everything received but states findings and conclusions and specifies orders made as a result.

### **Costs application**

[11] The Authority has the power to award costs.<sup>5</sup> This power is discretionary and is to be used in a principled manner. In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* the principles guiding the Authority's approach to costs are described as including:

- 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 based on a notional daily tariff.<sup>6</sup>

[12] The first step is to establish the Authority's daily tariff rate for this matter. The investigation meeting was held over two days. Allowing the daily tariff rate of \$4,500 for the first day and \$3,500 for the second day, the starting total is \$8,000.

[13] Mr Hu seeks payment of fees regarding legal advice. A law firm invoice for \$1,473 is provided. It relates to advice regarding Mr Hu's claims and remedies against Bestbase. The invoice is obviously for considerably less than the relevant tariff of \$8,000.

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<sup>5</sup> Employment Relations Act 2000 (the Act), Schedule 2, cl 15.

<sup>6</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

[14] I am satisfied that Mr Hu has incurred legal fees related to this proceeding and should be recompensed for them by Bestbase. He is also entitled to be reimbursed for the Authority's filing fee on the original application in file 3208079.

### **Compliance order application**

[15] Under the first determination Bestbase was ordered to pay Mr Hu the following sums within 28 days of the date of the determination:

- (a) personal grievance remedies of:
  - (i) \$19,440 gross as lost wages;
  - (ii) \$15,300 as compensation under s 123(1)(c)(i) of the Act; and
  - (iii) \$1,404 for a lost rent benefit; along with
- (b) a penalty payment of \$3,600.

[16] Bestbase was also ordered to make a penalty payment of \$5,400 into the Authority's bank account to be forwarded to the Crown account.

[17] Mr Hu mentions s 135A of the Act, which permits the chief executive (of the Ministry of Business, Innovation and Employment) or a labour inspector to recover in the District Court, as a debt due to the Crown, any penalty ordered by the Authority to be paid to the Crown. He mentions concerns about Bestbase having no good faith and appears to seek the penalty currently due to be paid directly to him to be changed to a payment to the Authority which could then transfer the sum to him.

[18] The first determination orders that Bestbase pays \$3,600 (directly) to Mr Hu. That is an order in a determination of the Authority and is best left as is, in the absence of any formal application.

[19] The first determination is dated 8 April 2024. Bestbase had still not paid Mr Hu despite several months expiring since the money was due. The company has not complied with the Authority's orders. There is no apparent basis to decline a compliance order and the order is made below.

### **Costs on the compliance application**

[20] Costs regarding the compliance application are reserved.

[21] It is not currently evident that Mr Hu incurred any relevant costs in relation to this application. However, if he did, the parties are encouraged to agree any such costs. If they cannot do so, Mr Hu is entitled to seek relevant costs. If he wishes to do so he is to provide costs submissions and any documents to the Authority within 28 days from the date of this determination. From the date of service of that submission Bestbase would then have 14 days to lodge any reply.

[22] In the meantime Mr Hu is entitled to be reimbursed for the Authority's filing fee on the compliance application.

### **Orders**

[23] Bestbase Construction Group Ltd is ordered to:

- (a) Comply with the first determination by, within 14 days of the date of this determination, paying Wei Hu:
  - (i) personal grievance remedies of \$19,440 gross as lost wages, \$15,300 as compensation and \$1,404 for a lost rent benefit; and
  - (ii) a penalty payment of \$3,600.
- (b) Pay Wei Hu, within 28 days of the date of this determination:
  - (i) \$1,473.00 for his costs on file 3208079;
  - (ii) \$71.55 for the Authority's filing fee on file 3208079; and
  - (iii) \$71.55 for the Authority's filing fee on file 3296299.

Nicola Craig  
Member of the Employment Relations Authority