

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 274
3081012

BETWEEN	HUNMO KANG Applicant
AND	SAENA COMPANY LIMITED Respondent

Member of Authority:	Vicki Campbell
Representatives:	Seungmin Kang, counsel for Applicant Cristina Pitas, counsel for Respondent
Investigation Meeting:	On the papers
Submissions received:	18 and 21 May 2021 from Applicant 19 and 25 May 2021 from Respondent
Determination:	25 June 2021

COSTS DETERMINATION OF THE AUTHORITY

A. Costs will lie where they fall.

[1] In a determination dated 11 May 2021 I held that Mr Kang had not been unjustifiably dismissed or disadvantaged in his employment, imposed penalties on Saena Company Limited for breaches of minimum standards and declined Saena Company Limited's counter-claims against Mr Kang.¹

[2] I reserved costs indicating to the parties that I was of a mind to let costs lie where they fell and invited them to resolve the issue between them. The parties have been unable to resolve the matter and each party has made submissions seeking a contribution to their costs from the other.

¹ *Kang v Saena Company Limited* [2021] NZERA 196.

[3] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.² The principles applying to costs are well settled and do not require repeating.³

[4] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴

[5] There was a mixed measure of success by both parties. Although Mr Kang was successful in his claim that Saena Company Limited had breached minimum standards other aspects of his claim were not successful. Neither was Saena Company Limited successful in its counter-claims against Mr Kang. The situation of mixed success has been examined by the Court in *Coomer v JA McCallum and Son Limited*.⁵

[6] Ultimately I must stand back and look at things in the round.⁶ Having done so I have concluded that neither party can be considered the successful party. Mr Kang's key claims were that he had been unjustifiably disadvantaged and then dismissed. Saena Company Limited successfully defended those claims but was not successful in defending the claims that it had breached minimum standards or in its key claims against Mr Kang.

[7] In all the circumstances of this case, I consider costs should lie where they fall and I decline to make any costs award to either party.

Vicki Campbell
Member of the Employment Relations Authority

² Employment Relations Act 2000, Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.

⁵ *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

⁶ *Ibid* at [43].