

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 16
3085275

BETWEEN SHUYUE LUAN
 Applicant

AND BEST HEALTH FOODS
 LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: Amy Keir, counsel for the Applicant
 James (Yuan) Gu, for the Respondent

Submissions Received: 16 November October 2021 from the Respondent

Date of Determination: 24 January 2022

COSTS DETERMINATION OF THE AUTHORITY

A. Best Health Foods Limited is to pay Shuyue Luan costs of \$9,878.22 by no later than Friday 4 February 2022.

[1] In a determination in October 2021 I found Shuyue Luan had been unjustifiably dismissed and ordered Best Health Foods Limited to pay Ms Luan compensation of \$15,000.00 and reimbursement of \$10,725.00. Part of Ms Luan's claim for arrears of wages was also upheld and the company was ordered to pay \$162.00 in arrears. Costs were reserved.

[2] I have received submissions for Ms Luan, but nothing has been provided for the company. This determination resolves the issue of costs.

[3] The investigation meeting took two full days. There was then an exchange of written submissions. A further opportunity was given for submissions after I received a translation of some material produced in evidence.

[4] Costs ordinarily follow the event. As Ms Luan was substantially successful, she is entitled to a contribution to her costs.

[5] The Authority often fixes costs by applying the well-known daily tariff approach. Here, an uplift is sought based on Ms Luan's *Calderbank* offers made on 20 November 2019 and 17 February 2021. Proceedings were lodged in December 2019, before the first *Calderbank* offer. The investigation meeting was first set for May 2020. Work was done to ahead of that date, but the meeting had to be adjourned. The investigation was later set for June 2021. Ms Luan's second *Calderbank* offer would have preceded the preparation required for the June 2021 meeting. Despite the *Calderbank* offers, the matter continued to investigation and determination. Ms Luan incurred costs of about \$11,300.00 following the first *Calderbank* offer and costs of \$2,300.00 before it.

[6] Costs of \$12,500.00 are sought, as opposed to costs of \$8,000.00 based on the daily tariff. Apart from the *Calderbank* point, counsel relies on the respondent's actions that lengthened and complicated the investigation. The respondent's statements canvassed irrelevant material and it did not meet deadlines. The meeting commenced an hour late because the respondent did not appear until after the Authority contacted Mr Gu. Additional costs were caused by a failure to resolve the question of costs.

[7] The *Calderbank* point adds little to assessing costs in this case. The respondent defended its dismissal decision by attempting to prove justification, but failed. The company's unwillingness to concede that the dismissal was not justified and to make a reasonable settlement offer (as appears to be the case), leaves it liable as the losing party to costs assessed on a contribution basis on ordinary principles.

[8] The applicant mostly failed on the arrears claim. That is relevant for present purposes. It largely offsets the additional costs caused by the respondent's lack of timeliness, initial non-appearance and focus on irrelevant material. It light of this, I fix the starting point at two complete days using the daily tariff, a total of \$8,000.00. However, some allowance should be made to account for the time after the investigation meeting for written submissions. I allow a further third of a day, or \$1,500.00. That brings costs to \$9,500.00.

[9] Ms Luan is also entitled to recover from Best Health Foods additional costs to cover her lodgement fee (\$71.56) and the meeting fees charged for the second day (\$306.66). There will be an additional \$378.22.

Philip Cheyne
Member of the Employment Relations Authority