

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 81  
3266799

BETWEEN YUNKAI SHI  
Applicant

AND DONG CONSTRUCTION  
LIMITED  
Respondent

Member of Authority: Jeremy Lynch

Representatives: Lennon Xi, advocate for the Applicant  
Dong Wang for the Respondent

Investigation Meeting: On the papers

Submissions Received: 24 January 2026 for the Applicant  
19 December 2025 for the Respondent

Date of Determination: 17 February 2026

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In December 2025, the Authority issued its determination as to Yunkai Shi's personal grievance claims.<sup>1</sup> In that determination, the Authority declined Mr Shi's personal grievances.

[2] The parties were encouraged to resolve any issues of costs between themselves, but have been unable to do so. Having successfully defended Mr Shi's claims, Dong construction Limited (Dong) now seeks an award of costs.

**Costs principles**

[3] The Authority has power under clause 15 of Schedule 2 of the Act to award

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<sup>1</sup> *Yunkai Shi v Dong Construction Limited* [2025] NZERA 817.

costs. This power is discretionary and must be used in a principled manner.<sup>2</sup> 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 are 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 increases costs unnecessarily can be taken into account in inflating or reducing an award;
- costs generally follow the event;
- awards of costs will generally be modest; and
- frequently, costs are judged against a notional daily tariff.<sup>3</sup>

### **Costs outcome**

#### *Starting point*

[4] As Dong was the successful party in the substantive matter, it is entitled to a consideration of costs.

[5] The starting point for a consideration of costs is therefore \$6,750.00, being one full day of the Authority's notional daily tariff, plus an additional (non-consecutive) additional half day, before any upward or downward adjustment.

#### *Attempts to resolve*

[6] Neither party provided any evidence or submissions as to settlement offers, or other attempts to resolve the matter.

[7] As such, there is no adjustment to the daily tariff in respect of attempts to settle.

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<sup>2</sup> *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808, and *Faggotti v Acme & Co Limited* [2015] NZEmpC 135.

<sup>3</sup> Employment Relations Authority "Practice Directions of the Employment Relations Authority Te Ratonga Ahumana Taimahi" [www.era.govt.nz/assets/upload/practice-direction-of-era](http://www.era.govt.nz/assets/upload/practice-direction-of-era).  
<https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>

### *Conduct*

[8] Dong submits that an award of costs is appropriate as two case management conferences were required, a number of adjournments were granted to Mr Shi, a witness summons was incorrectly served by Mr Shi, two investigation meeting dates were required, and Dong was required to lodge written evidence, and prepare and lodge “extensive written submissions”.

[9] The Authority notes that Dong’s witness statement was brief, comprising only eight lines. Similarly, Dong’s submissions comprise only nine paragraphs. As such it is difficult to see how Dong can reasonably claim to have lodged “extensive” submissions.

[10] In addition, Mr Wang submits that he was required to incur the cost of international travel to participate in the investigation meetings.

[11] No evidence was lodged in support of this.

[12] Despite Dong appearing critical of Mr Shi’s conduct throughout the investigation process, the Authority notes that Dong’s conduct also contributed to delays. Mr Wang, as the representative for his company, was unavailable to attend dates offered for case management conferences, and failed to comply with timetable directions for evidence and submissions.

[13] The Authority does not usually award costs in respect of case management conferences.

[14] I do not accept that Mr Shi’s conduct unreasonably delayed the investigation.

### *The daily tariff*

[15] Although costs in the authority are frequently awarded using a notional daily tariff, which can be adjusted upwards or downwards for relevant factors, the Authority usually only awards a contribution towards the representation costs incurred by the successful party.

[16] In this matter, Dong seeks an award in the sum of \$7,000.00 which it submits is “only a contribution towards the actual costs incurred...”.

[17] However, Dong was represented throughout the entire investigation by Mr Wang, its sole director and shareholder.

[18] Dong did not provide any evidence that it incurred any representation costs, and nor did it claim to have been represented by anyone other than Mr Wang.

[19] Dong did not provide any evidence in support of its claim that it incurred international travel costs to attend the investigation. It is noted that the Authority scheduled the resumption investigation meeting so that it coincided with a period in which Mr Wang had advised he was going to be in New Zealand and was therefore convenient for him.

[20] Dong has not provided any evidence to support the costs award it seeks.

[21] Stepping back to look at matters overall, in the circumstances of this case, it is appropriate that costs lie where they fall.

### **Orders**

[22] In its discretion, the Authority makes no order as to costs.

Jeremy Lynch  
Member of the Employment Relations Authority