

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 170  
3271759

BETWEEN	WILLIAM WEI Applicant
AND	XIAOLI (ERIC) LIU First Respondent
AND	LH STAR LIMITED Second Respondent

Member of Authority:	Rachel Larmer
Representatives:	Applicant in person Simpson Tong, counsel for the Respondents
Investigation Meeting:	On the papers
Submissions and Information Received:	3 March 2025 from the Respondent 5 and 19 March 2025 from the Applicant
Determination:	21 March 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Authority issued its substantive determination in this matter on 17 February 2025. The applicant, Mr William Wei, succeeded with his wage arrears and unjustified constructive dismissal personal grievance against the first respondent, Mr Xiaoli (Eric) Liu.<sup>1</sup>

[2] Although Mr Wei's dismissal was substantively justified it had been carried out in a procedurally unfair manner, which made Mr Wei's dismissal procedurally unjustified. Mr Wei was also found to have had a high level of contribution towards the

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<sup>1</sup> *Wei v Liu and LH Star Ltd* [2025] NZERA 80 at [138]-[142].

situation that had given rise to his constructive dismissal. Mr Wei's claim that he had been verbally abused at work by a co-worker in mid-November 2023 did not succeed.

[3] In the substantive determination Mr Liu was ordered to pay Mr Wei \$6,887.63, consisting of:<sup>2</sup>

- (a) \$180.42 as unpaid time and a half for the two public holidays he worked;
- (b) \$3,393.46 annual holiday pay arrears;
- (c) \$242.20 interest from 14 December 2023 until 17 February 2025, being the date of this determination, as calculated using the Civil Debt Calculator on the Ministry of Justice website;
- (d) \$3,000.00 distress compensation, without deduction, under s123(1)(c)(i) of the Act for his procedurally unjustified dismissal; and
- (e) \$71.55 to reimburse his filing fee.

[4] The substantive determination recorded that Mr Liu failed to make the legally required deductions (PAYE, ACC levy and student loan repayments) from the cash wages he paid Mr Wei. No wage and time records or holiday and leave records were kept by Mr Liu for Mr Wei. Mr Liu did not provide Mr Wei with a written employment agreement.

[5] LH Star Limited's (LH Star's) claim it was Mr Wei's employer did not succeed. The doctrine of the undisclosed principal was applied to determine that Mr Liu personally employed Mr Wei, not LH Star.

[6] For the purposes of assessing costs Mr Wei was the successful party, however as a self-represented party he did not actually incur any legal costs, so cannot be awarded any costs. Mr Wei was however reimbursed his filing fee in the substantive determination.

[7] However, the respondents' counsel indicated at the end of the investigation meeting that there had been a without prejudice except as to cost settlement offer to Mr Wei that they believed could potentially change the usual costs' position. The

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<sup>2</sup> *Wei v Liu and LH Star Ltd*, above n1 at [146].

respondents had offered Mr Wei a settlement that was more than the amount he was awarded in paragraph [146] of the substantive determination.

[8] The respondents were given an opportunity to lodge costs submissions, to which Mr Wei was given an opportunity to reply.

[9] The respondents said they had incurred actual legal costs of \$25,000.00, and they sought to recover \$20,500.00 of that amount for this one day investigation meeting. Mr Wei objected to any costs being awarded to the respondents.

### **The issues**

[10] The following issues required determination:

- (a) Should Mr Wei be ordered to contribute to the respondents actual legal costs?
- (b) If so, how much should Mr Wei be ordered to pay?

### **Should Mr Wei be ordered to contribute to the respondents actual legal costs?**

[11] Costs usually follow the event, meaning the successful party is entitled to a contribution to their actually incurred legal costs.

[12] It was the respondents who applied to have LH Star joined as the second respondent, on the basis that entity was Mr Wei's employer. As a result LH Star was joined in the Directions of the Authority (DoA) dated 28 May 2024. The DoA also recorded that it appeared the doctrine of the undisclosed principal may apply to Mr Wei's employment, so the respondents were on notice about that from an early stage of these proceedings. Notwithstanding that preliminary indication from the Authority, the respondents pursued this matter as if LH Star was the employer even though their own evidence did not support that position.

[13] LH Star cannot be said to have been a successful party, as its claim that it was Mr Wei's employer did not succeed. Mr Wei only ever identified Mr Liu as his employer, so he should not be required to pay any costs to LH Star.

[14] Although the "without prejudice except as to costs" (Calderbank) offer was made in writing on 20 March 2024, it only dealt with Mr Wei's wage arrears claim, not his personal grievance claims.

[15] The Calderbank offer also failed to address that no employment documentation had been kept for Mr Wei and that no employee deductions had been remitted to Inland Revenue Department (IRD) from his wages. Accordingly, the Calderbank offer had Mr Wei accepted it would not have solved the problem of fixing the IRD problems that were associated with Mr Liu's employment of Mr Wei.

[16] The Calderbank offer did not provide for an award of distress compensation, which is a tax free amount. That can be contrasted with the Authority's determination, which awarded Mr Wei \$3,000.00 distress compensation, after s 124 of the Employment Relations Act 2000 had been applied.

[17] The Authority has not been given any information about the total amount of employee deductions that Mr Liu is legally required to remit to IRD in his capacity as Mr Wei's employer. However, given that Mr Wei was paid in excess of \$22,000.00 gross while employed, plus he was awarded \$573.88 gross wage arrears by the Authority in its substantive determination, it is likely that Mr Liu's obligation to pay outstanding deductions to IRD will exceed \$3,000.00 before any penalties or interest is added to the amount owed.

[18] On that basis, the Calderbank offer most likely did not exceed what Mr Wei recovered as a result of him succeeding with his claims in the Authority.

[19] As Mr Wei pointed out in his submissions, there was a public interest element to his claims because he identified an employer (Mr Liu) who was obtaining an unfair competitive labour market advantage compared to other employers operating in the takeaway business because Mr Liu paid Mr Wei in cash, 'under the table'. It was only as a result of Mr Wei's Authority proceedings that IRD will now become aware that Mr Liu owed it deductions arrears from Mr Wei's cash wages.<sup>3</sup>

[20] Costs are discretionary. The discretion is not to be exercised in Mr Liu's favour in this particular matter. Mr Liu was clearly the unsuccessful party. The amount of the Calderbank offer was small, which meant when the overall success is weighed Mr Wei most likely obtained a better overall outcome from the Authority than he would have had he accepted the Calderbank offer in March 2024.

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<sup>3</sup> *Wei v Liu and LH Star Ltd*, above n1 at [144] and [145].

**Outcome**

[21] The respondents' application for an award of costs in their favour did not succeed. Costs are to lie where they fall.

Rachel Larmer  
Member of the Employment Relations Authority