

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 669
3086052

BETWEEN

FEI XIE, HONGWEI WANG,
PINGYAN ZHAO, SHUAI
ZHANG, JINSHOU HONG and
ZHU GUO XI
Applicants

AND

MARILYN TAUFA
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Karen Keat, advocate for the Applicants

Costs submissions
received: 22 May 2023

Determination: 10 November 2023

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 17 May 2023¹, the Authority found that the respondent Marilyn Taufa, having been a person involved in a breach of employment standards, was liable for certain minimum payments due to the six applicant workers.

[2] The applicants had been granted leave to bring their claims against Ms Taufa in circumstances where their employer, Shalom Scaffolds & Renovations Ltd (SS&RL), had been put into liquidation and removed from the register of companies.

[3] Ms Taufa, as a person involved, was ordered to pay the applicants amounts for holiday pay and untaken annual leave in a total of \$43,725.20.

[4] The applicants were represented in the Authority's investigation meeting by Karen Keat who has applied for an order for costs.

¹ *Fei Xie and 5 others v Marilyn Taufa* [2023] NZERA 251

[5] Ms Taufa who was represented at the investigation meeting, has not responded to the application.

[6] Ms Keat provided the Authority with a copy of a tax invoice in the names of the applicants showing fees and expenses charged to them of \$9,851.55 in total.

[7] Some of that work was for mediation and for the claims originally brought against SS&RL and is therefore not taken into account in considering the application.

Principles of costs awards in Authority investigations

[8] The Authority has the power to award costs under Clause 15 of Schedule 2 of the Employment Relations Act 2000.

[9] The law to be applied by the Authority in determining costs was reviewed by the Employment Court in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*².

[10] In summary the Court held³, the Authority has a discretion in awarding costs and fixing the amount of those. Costs will normally be awarded to the party most favoured in the result of an Authority investigation, and the amount of costs will usually be modest.

[11] Costs are not to be awarded as punishment or to express disapproval of a party's conduct. Their purpose is to compensate a party who or which has incurred expense in applying to the Authority to have it investigate and determine claims, or incurred expense in responding to such claims.

[12] It is open to the Authority to question whether all or any costs incurred by a party were necessary or reasonable.

[13] The nature of the particular investigation meeting can influence costs. Attempts by parties to resolve matters themselves by compromise, including the making of without prejudice offers may be considered.

[14] The Authority has a discretion to award costs based on a daily tariff.

² [2005] ERNZ 808

³ Above at [44]

[15] In taking a tariff-based approach, adjustments up or down can be made where necessary, to reflect the conduct of parties, the preparation required in a particularly complex matter, or any other significant features of the individual investigation meeting.

[16] Currently the Authority's tariff, which is publicised and revised periodically, is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.

Should costs be awarded?

[17] The Authority made orders entirely in favour of the applicants and there is no reason why they should not be awarded costs.

[18] The investigation meeting was convened on 29 and 30 August, and 4 October 2022. The first day was only a brief meeting because advice sent to the parties made it appear that the meeting had been cancelled, when in fact the venue had been changed after the Authority moved out of its Queen Street offices to a new address.

[19] The second day was a full one, and the third day occupied about 4 hours.

Order for costs and disbursements

[20] The applicants are awarded costs at the rate of the daily tariff for a day and a half, or \$6,250.

[21] They are also awarded \$71.55 in reimbursement of the Authority fee for lodging their statement of problem, and \$95.00 as expenses for printing, photocopying and courier fees.

[22] Marilyn Taufa is ordered to pay the applicants \$6,250 costs and \$166.55 fees and expenses.

[23] Payment is to be made within 14 days of the date of this determination.

Alastair Dumbleton
Member of the Employment Relations Authority