

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 629
3314240

BETWEEN	WENDY XU Applicant
AND	ABHYUDAYA LIMITED First Respondent
AND	VINCENT HUANG Second Respondent

Member of Authority: Eleanor Robinson

Submissions received: 12 September 2025 from the Applicant
None from the Respondent

Determination: 7 October 2025

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 20 August 2025 ([2025] NZERA 502) the Applicant Wendy Xu was determined to have been unjustifiably dismissed and unjustifiably disadvantaged by the Respondent, Abhyudaya Limited (Abhyudaya).

[2] In that determination costs were reserved in the hope that the parties would be able to settle this issue between themselves. Unfortunately they have been unable to do so, and Ms Xu has filed submissions in support of a costs application.

[3] The matter involved a one day investigation meeting.

[4] Mr Prisk, on behalf of Ms Xu is claiming a contribution to costs in the amount of \$4,434.78.

[5] Mr Prisk submits that Ms Xu engaged his services on a contingency fee basis. That fee amounts to \$4,434.78 as calculated based upon the amounts awarded to Ms Xu as remedies by the Authority in determination [2025] NZERA 502.

Principles

[6] The power of the Authority to award costs arises from Section 15 of Schedule 2 of the Employment Relations Act 2000 which states:

15 Power to award costs

- (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.
- (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable.

[7] Costs are at the discretion of the Authority¹. The principles and the approach adopted by the Authority on which an award of costs are made are well settled and outlined in *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)*².

[8] It is a principle set out in *Da Cruz* that costs are not to be used as a punishment. It is also a principle that costs are discretionary and awards made are consistent with the Authority's equity and good conscience jurisdiction.

Costs Award

[9] This was a one day investigation so the starting point for costs assessed at the notional daily tariff in the Authority is \$4,500.00.

[10] Ms Xu was the successful party and costs normally follow the event.

[11] **I order Abhyudaya to pay Ms Xu the sum of \$4,434.78 as costs.**

[12] **Abhyudaya is also ordered to pay Ms Xu the Authority filing fee in the sum of \$71.55.**

Eleanor Robinson
Member of the Employment Relations Authority

¹ *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622

² *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808