

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 348  
3252840

BETWEEN                      DAIYING XU  
Applicant

AND                              BIG SKY FOOD LIMITED  
Respondent

Member of Authority:      Natasha Szeto

Representatives:            Rosa Hehir, counsel for the Applicant  
Lennon Xi, advocate for the Respondent

Submissions received:      23 March 2025 from the Applicant and  
No response by 7 April 2025 from the Respondent

Date:                              17 June 2025

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]      On 24 February 2025, I issued a determination<sup>1</sup> in which I found that Daiying Xu was unjustifiably dismissed and disadvantaged in her employment with Big Sky Food Limited (BSF).

[2]      Costs were reserved. The parties were referred to the Authority's usual practice of applying the daily tariff to determine costs and encouraged to resolve any issue of costs between them. They have been unable to do so, and this determination accordingly resolves the issue of costs.

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<sup>1</sup> *Daiying Xu v Big Sky Food Limited* [2025] NZERA 111.

## Ms Xu's submissions

[3] Ms Xu lodged and served a memorandum in respect of costs. She asks for \$5,000.00 in costs which she says represents the amount of time spent on her file by Manawatu Community Law Centre (MCLC), and to be reimbursed her filing fee of \$71.55. Ms Xu says BSF failed to engage with her attempts to resolve the issue of costs.

[4] BSF had until 7 April 2025 to respond to Ms Xu's costs application. It failed to respond at all, despite being advised by the Authority that the matter would progress to a costs determination. I now proceed to determine the issue of costs.

## Analysis

[5] The Authority has clear statutory power to order such costs and expenses to be paid as the Authority thinks reasonable.<sup>2</sup> Costs are awarded at the Authority's discretion.<sup>3</sup> The principle that costs follow the event is well-recognised by the Authority and courts.<sup>4</sup>

[6] The Authority has adopted a daily tariff approach as the starting point for considering costs, which is well known. The current daily tariff is \$4,500.00 for the first day of hearing.<sup>5</sup> The parties can expect the Authority to adhere to the approach of applying the daily tariff, unless there is good reason to depart from it. In this case, the investigation meeting ran for one day, and I proceed on the basis that the appropriate starting point is \$4,500.00.

[7] The principles and the approach adopted by the Authority in which an award of costs is made are settled and set out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*<sup>6</sup> as confirmed in *Fagotti v Acme and Co Limited*<sup>7</sup>.

[8] It is a principle set out in *Da Cruz* that costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct. The financial situation of the party paying costs can be a relevant factor to take into account. Awards

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<sup>2</sup> Schedule 2, clause 15 of the Employment Relations Act 2000.

<sup>3</sup> *NZ Automobile Association Inc v McKay* [1996] 2 ERNZ 622.

<sup>4</sup> *Victoria University of Wellington v Alton-Lee* [2001] ERNZ 305 (CA) at [48].

<sup>5</sup> For further information about the factors considered in assessing costs see:

[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)

<sup>6</sup> [2005] 1 ERNZ 808.

<sup>7</sup> [2015] NZEmpC 135 at 114.

made should be modest, and consistent with the Authority's equity and good conscience jurisdiction.

### *Analysis*

[9] As the successful party, Ms Xu is entitled to a contribution to her costs actually and reasonably incurred. In this case, Ms Xu has not personally incurred any legal costs, but costs have been incurred by MCLC on her behalf. Ms Xu asks for costs of \$5,000.00 to be paid to MCLC relying on the decision of the Employment Court in *Innovative Landscapes (2015) v Celia Popkin*<sup>8</sup> in support of her submission that an order for costs should be made notwithstanding she has not actually incurred legal costs. While the decision in *Innovative Landscapes* concerned the application of the Employment Court's discretion, the reasoning is applicable to the discretion to be exercised by the Authority. I find that making a costs order in these circumstances is consistent with the Authority's broad discretion informed by the underlying purposes and objectives of the statutory scheme.

[10] It is rare for indemnity costs to be awarded in the Authority. Ms Xu has not provided any reason that costs above tariff would be justified in this case. I consider tariff costs of \$4,500.00 are both modest and appropriate. BSF is to pay \$4,500.00 to Ms Xu and the full amount of \$4,500.00 is then to be paid by Ms Xu to MCLC. I also order BSF to reimburse Ms Xu the Authority's filing fee of \$71.55.

### **Orders**

[11] For the reasons set out above, I order Big Sky Food Limited to pay Daiying Xu within 28 days of the date of this determination:

- (a) The sum of \$4,500.00 as a contribution to her costs. The full amount of \$4,500.00 is to be paid by Ms Xu to Manawatu Community Law Centre within 7 days of payment being received by her.
- (b) The sum of \$71.55 for her filing fee.

Natasha Szeto  
Member of the Employment Relations Authority

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<sup>8</sup> [2020] ERNZ 262.