

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 413
3226679

BETWEEN CHAOJIE YANG
Applicant

AND AUTO TALENT LIMITED
Respondent

Member of Authority: Peter Fuiava

Representatives: David Prisk, advocate for the Applicant
Ginrick Credo and Samuel Moore, counsel for the
Respondent

Submissions received: 5 and 20 June 2024 from Applicant
19 June 2024 from Respondent

Determination: 10 July 2024

COSTS DETERMINATION OF THE AUTHORITY

[1] By determination dated 30 May 2024,¹ I found that Auto Talent Limited (ATL or the company) owed Chaojie Yang wage and holiday pay arrears and had failed to provide him with an employment agreement as required by ss 64 and 65 of the Employment Relations Act 2000 (the Act). Consequently, an order for wage arrears, interest, and a share of a penalty for a breach of the Act were made in Mr Yang's favour.

[2] However, Mr Yang was not wholly successful because his claims of unjustified constructive dismissal and an alleged breach of the meals and rest breaks provisions of the Act were dismissed.

[3] The parties have not been able to come to an agreement on costs. The essential issue this determination must resolve is the assessment of costs when there has been a mixed measure of success.

¹ *Chaojie Yang v Auto Talent Limited* [2024] NZERA 320.

What do the parties say about costs?

[4] Mr Yang relies on the well-established cost principles set out in *PBO Limited v Da Cruz*.² As the successful party and as the investigation meeting took one day, he seeks costs of \$4,500 being the daily tariff for the first day of an investigation meeting.

[5] In response, ATL submits that as Mr Yang was not entirely successful with his claim, the Authority should impose costs of less than half the applicable tariff or less than \$2,250. I was referred to *Coomer v JA McCallum and Son Limited* [2017] ERNZ 885 where his Honour Judge Smith at [37] noted that determining which party was successful can be problematic. However, it was immaterial that a party had not succeeded to the full extent of their claim because “success on more limited terms is still success.”

[6] In reply, Mr Yang submitted that the company’s approach to costs suggested that over 50 percent of the investigation meeting was devoted to his constructive dismissal claim which is incorrect. The majority of the time was spent on examining the company’s counterclaim that Mr Yang owed it money for an alleged car accident which was dismissed by the Authority.

What is the Authority’s approach to costs?

[7] The Authority has the power under sch 2 cl 15 of the Act to award costs. However, the discretion to order a party to pay costs to another party must be exercised in accordance with principle. Those principles are well settled and are outlined in its practice note which is publicly available.³ Further information is also available in its Practice Direction.⁴

[8] Informing the Authority’s approach on costs is relevant caselaw such as *PBO v Da Cruz* in which the Employment Court observed that, since its inception, the Authority has held to some basic tenets concerning costs which relevantly include:⁵

- That costs generally follow the event.
- That awards will be modest.

² *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 at [44].

³ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

⁴ www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf.

⁵ n 2 at [44].

- That frequently costs are judged against a notional daily rate.

Should costs be awarded?

[9] In *Coomer*, the court accepted that in assessing costs, mixed success was still success. Even so, the court only awarded Mr Coomer costs for the first day of the investigation meeting and not the second. In my view, this reflects that in the Authority, Mr Coomer was successful with only one of his claims (unjustified disadvantage) when the remainder of his claims (a wage arrears claim, a penalty claim, and a constructive dismissal claim) were all dismissed.

[10] The above cannot be said for Mr Yang who I find was successful with approximately 50 percent of his claims. Although unsuccessful with his constructive dismissal claim and a claim of a breach of the meal and rest breaks provisions of the Act, he was nevertheless successful with his claim for wage and holiday pay arrears and a penalty claim for a breach of the employer's statutory obligation to provide an employee with an employment agreement. I also find that these claims involve important and fundamental employment rights.

[11] Although Mr Yang may not have succeeded to the full extent of his claim, he was successful with at least half which would not have been resolved had he not come to the Authority. This was because of ATL's mistaken belief that a set off applied in its favour which meant that it did not need to pay him what it was statutorily obliged to pay. By any realistic appraisal, Mr Yang was the successful party and I see no reason to depart from the well-established principle that costs follow the event.

Outcome and order

[12] For the reasons given above, the Authority orders **Auto Talent Limited to pay Mr Yang \$4,500 as a contribution towards his representative's actual costs no later than Wednesday 7 August 2024.**

Peter Fuiava
Member of the Employment Relations Authority