

NOTE: This determination contains an order prohibiting publication of certain information at [7].

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 329
3316220

BETWEEN CHAOJIE YANG
Applicant

AND AUTO TALENT LIMITED
Respondent

Member of Authority: Peter Fuiava

Representatives: David Prisk, advocate for the Applicant
Ailun (Allen) Sun, company director for the Respondent

Investigation Meeting: On the papers

Submissions or information received: Up to, and including, 12 March 2025 from the Applicant
Up to, and including, 11 March 2025 from the Respondent

Determination: 12 June 2025

DETERMINATION OF THE AUTHORITY

What is the employment problem?

[1] This is an application brought on behalf of Chaojie Yang for compliance of a costs determination made against Auto Talent Limited (ATL or the company) in the amount of \$4,500.¹ The company was ordered to pay this sum no later than Wednesday 7 August 2024.² Although Mr Yang was not wholly successful in the Authority, he nevertheless succeeded with 50 percent of his claims and was entitled to costs for the reasons set out in the determination.³

¹ *Chaojie Yang v Auto Talent Limited* [2024] NZERA 413.

² At [12].

³ At [10] – [11].

What are the parties' positions?

[2] It is not in dispute that ATL is in breach of the Authority's costs order because no monies have been paid and the entire amount remains outstanding. ATL's director, Ailun Sun, claims that his company's financial situation is extremely dire and that the business is heavily in debt with several unpaid bills to suppliers. Mr Sun further reports that business performance has been poor and that he does not have the capacity to pay the costs order in full but would be able to do so if payments were spread out over the next 24 to 36 months.

[3] The request for payment by instalments is opposed by Mr Yang's advocate, Mr Prisk, who asserts that Mr Sun owns several other companies, owns two luxury vehicles (denied by Mr Sun) and a property in Auckland (which Mr Sun says is heavily mortgaged). It was further submitted that Mr Sun is not the only director of ATL and that the Authority should order both he and his co-director to make funds available to pay the costs order of \$4,500 in one lump sum within the next seven days with interest as well as a penalty and legal costs.

[4] The essential issue involves consideration of s 138(4A) of the Act and whether it is appropriate to order ATL make payment by instalments having regard to its financial position. The section states that if the compliance order relates in whole or in part to the payment to an employee of a sum of money, the Authority may order payment to the employee by instalments, but only if the financial position of the employer requires it. Here, the employee was Mr Yang and the employer was ATL.

Discussion

[5] Mr Sun initially provided the Authority with supporting information and evidence of ATL's financial position which comprised GST returns as recorded by Inland Revenue (IR) from 31 July 2020 to 31 July 2024, ATL's business bank account with ANZ (from 29 July to 26 August 2024) and an IR tax summary for the company as of 27 August 2024.

[6] However, as the bank statement provided covered a short period, I requested further financial information from Mr Sun about ATL's financial position. In response, an annual report for the company for the year ending 31 March 2023 and its IR returns for the tax years ending 31 March 2021 and 2023 were submitted.

[7] Mr Prisk brought to my attention other companies in which Mr Sun was either a shareholder and/or director as recorded by the New Zealand Companies Office. As a result, Mr Sun was directed to provide financial and tax return information for these businesses for the year ending 31 March 2024. I was subsequently provided with either IR tax returns and/or annual reports for ATL and these additional businesses for the requested period. Given the commercial sensitivity surrounding all of the financial documents provided by Mr Sun, a non-publication order shall apply to these prohibiting the disclosure of this material to any third party except with leave from the Authority.

[8] When the contents of these documents are individually and cumulatively considered, I accept Mr Sun's submission that ATL and his other companies have poorly performed in recent times and that payment by instalment of the costs order of \$4,500 over a 15-month period is just and necessary. However, Mr Sun has been aware of this liability since 10 July 2024 being the date of the costs determination. While ATL's financial difficulties are acknowledged, Mr Sun has travelled to China during the period of this investigation and it is unacceptable that nothing has been paid towards the costs order over the last 10 months when the amount fell due on 7 August 2024. This must be retrospectively reflected in that the 15-month period to pay by instalments shall be backdated to 7 August 2024.

[9] On the information before the Authority the following instalment plan is reasonable and is ordered:⁴

- (i) Auto Talent Ltd is to pay Chaojie Yang \$4,500 by instalment payments of \$225 per week with the first payment starting Friday 20 June 2025 with the entire sum (less any payments that may have recently been made) paid in full by close of business (5 pm) Friday 7 November 2025;
- (ii) ATL is to make successive payments of \$225 per week every Friday by close of business until the total amount of \$4,500 in costs is paid in full.

[10] The Authority has the power to award interest under cl 11 of the Second Schedule of the Act. In the event that ATL fails to comply with the above payment

⁴ Employment Relations Act 2000, s 138(4A).

instalment plan, Mr Yang is able to recover interest on the outstanding amount from 7 August 2024 to the date full payment of costs plus interest is made. The civil debt interest calculator shall be used to calculate interest.⁵

[11] If the respondent fails to comply with this compliance order, Mr Yang may apply to the Employment Court for the exercise of its powers under s 140(6) of the Act.

Outcome

[12] Auto Talent Limited is ordered to pay Chaojie Yang costs of \$4,500 less any payments made in the interim in accordance with the payment schedule set out at [9] above.

Filing fee

[13] The filing fee of \$71.55 is an amount Mr Yang can reasonably recover from ATL which it is ordered to pay within 21 days from the date of this determination.

No penalty and no costs awarded

[14] In light of Mr Sun's cooperation in providing the Authority with financial information that supported his company's case for payment by instalment under s 138(4A) of the Act, awarding a penalty, which is inherently punitive in nature, would be unjust and unduly harsh. I make no order for a penalty.

[15] Further, there has been no active engagement by Mr Yang in this application which appears to have been primarily driven by Mr Prisk himself. As it has not been shown that Mr Yang has incurred costs on this occasion, I make no order for costs but impress upon Mr Sun to take the additional time afforded to his company by making full payment of the costs order of \$4,500 as directed.

Peter Fuiava
Member of the Employment Relations Authority

⁵ www.justice.govt.nz/fines/civil-debt-interest-calculator