

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 750  
3173083

BETWEEN                      CHANGYONG ZHANG  
Applicant

AND                              JRL CULTURE MEDIA  
LIMITED  
Respondent

Member of Authority:        Andrew Gane

Representatives:              May Moncur, advocate for the Applicant  
Amy De-La Cruz, advocate for the Respondent

Investigation Meeting:        On the papers

Submissions and other:  
information received:        2 October 2023 for the Applicant  
18 October for the Respondent

Determination:                22 December 2023

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**SECOND DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] By determination dated 15 September 2023, I found Changyong Zhang was unjustifiably constructively dismissed by JRL Culture Media Limited (JRL).<sup>1</sup>

[2] I reserved my determination on the amount of wage arrears and encouraged the parties to resolve any issues of wage arrears between themselves. I also reserved costs and encouraged the parties to resolve any issues of costs between themselves.

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<sup>1</sup> [2023] NZERA Auckland 531.

[3] The parties have been unable to resolve the issues of wage arrears and costs. Mr Zhang's representative provided submissions in support of Mr Zhang's claim for wage arrears and an award of costs payable to Mr Zhang by JRL.

[4] JRL's representative provided submissions setting out a calculation of wage arrears owed and payslips showing the amounts paid post the investigation meeting. JRL also opposed the amount of costs Mr Zhang was claiming against JRL.

### **Wage arrears**

[5] After the investigation meeting, on 14 June 2023 JRL made a payment of \$756 (\$649.84 net) to Mr Zhang's designated account. This payment encompassed two weeks (10 days) of sick leave payment and an additional 8% holiday pay, covering the first two weeks of Mr Zhang's notice period. The remaining two weeks of the notice period was to be unpaid sick leave, as the entirety of the 10 days of sick leave payment had been utilised.

[6] 16 June 2023, JRL made a further payment of \$3,564 (\$2,961.16 net) to Mr Zhang's nominated account based on the calculation set out below.

Method of calculation:

Hourly rate difference:  $\$28 - \$22 = \$6$

Weekly:  $\$6 \times 25 \text{ hours} = \$150$

Period: 27/09/21 to 12/03/22 = 22 weeks (24 weeks minus 2 weeks unpaid leave-annual close down during Christmas)

Total payment=  $\$150 \times 22 \text{ weeks} = \$3,300$  Gross

Plus 8% holiday pay=  $\$264$

Grand total=  $\$3,564$  Gross

[7] After reviewing the supporting documentation lodged in the Authority, I agree with the payment of wage arrears submitted by JRL as being correct as required by paragraph [50] of the determination.<sup>2</sup>

[8] As JRL has paid Mr Zhang the amounts owing, no further orders regarding wage arrears are required.

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<sup>2</sup> *Zhang v JRL Culture Media Limited* [2023] NZERA 531.

## **Costs**

[9] The power of the Authority to award costs is contained in cl 15 of sch 2 of the Employment Relations Act 2000. The principles and the approach adopted by the Authority in which an award of costs is made are well settled.

### *Costs follow the event*

[10] I find there is no reason to depart from the usual principle that a successful party is entitled to a contribution towards their representation costs.

### *Application of the daily tariff*

[11] The Authority has adopted a daily tariff approach as the starting point for considering costs. This is well known, and the current daily tariff is \$4,500.00 for the first day of hearing, and \$3,500.00 for subsequent hearing days.<sup>3</sup>

[12] The parties can expect the Authority to adhere to this approach, unless there is good reason to depart from it.

[13] Mr Zhang has requested an uplift in costs based on an earlier offer of settlement. JRL submits that costs should be significantly reduced as Mr Zhang was only partially successful in his case.

[14] In the circumstances, I am not persuaded that the JRL's rejection of an offer warrants an uplift, or that Mr Zhang's "partial" success warrants a departure from the normal daily tariff. I find no reason to depart from using the daily tariff and that, therefore is the basis of the award of costs.

[15] The investigation meeting in this matter was for two full days and a third of a day. The parties attended together with their representatives and other witnesses.

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<sup>3</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) .

## **Orders**

[16] Mr Zhang was the successful party and is entitled to receive an award of costs. This means Mr Zhang is entitled to an award of costs of \$9,500.00 and reimbursement of the \$71.55 lodging fee.

Andrew Gane  
Member of the Employment Relations Authority