

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 822
3328440

BETWEEN XIAOMENG FENG
Applicant

AND YOGA LIMITED
Respondent

Member of Authority: Helen van Druten

Representatives: Adrian Plunket, advocate for the Applicant
Timothy Oldfield, counsel for the Respondent

Submissions received: 25 November 2025 from the Applicant
No submissions from Respondent

Investigation Meeting 7 August 2025

Determination: 17 December 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] By way of a Determination of 6 November 2025, the Authority found that Xiaomeng (Fiona) Feng was unjustifiably dismissed and Yoga Limited was ordered to pay Ms Feng \$8,000 compensation pursuant to section 123 (1)(c)(i) of the Employment Relations Act 2000 (the Act).¹

[2] Costs were reserved for the parties to negotiate but no agreement was reached. The investigation meeting of 7 August 2025 was conducted in person and took a part-day.

¹ *Feng v Yoga Limited* [2025] NZERA 709.

The application for costs

[3] In a concise email of 25 November 2025, Mr Plunket sought costs of \$2,745 (being 61 percent of \$4,500) as per the Authority's normal daily tariff approach. This was calculated on the basis that the investigation meeting commenced at 10am and continued for four and a quarter hours, being approximately 61 percent of the seven hours scheduled as a full day.

[4] Ms Feng did not seek reimbursement of the Authority filing fee.

[5] There was no response from Yoga Ltd as to costs. I am satisfied that Mr Oldfield was copied into Ms Feng's costs submission to the Authority on 25 November 2025 and again notified on 3 December 2025. This costs determination is made on that basis.

Assessment

The Authority's costs approach

[6] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Employment Relations Act 2000. The discretion to order a party to pay costs to another must be exercised on a principled basis and awards made consistent with the Authority's equity and good conscience jurisdiction. Those principles are well settled and are outlined in the Authority's Practice Note,² and Practice Direction,³ both publicly available online.

Costs for Ms Feng

[7] A starting point is that costs normally follow the event and as Ms Feng was successful in her personal grievance and obtained a compensatory remedy, an award of costs is appropriate.

Applying the daily rate

[8] The Authority's general approach is to apply a notional daily rate and only adjust that rate if persuaded that circumstances or other factors require an upward or

² www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-

³ <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>.

downward adjustment.⁴ The current full daily rate is \$4,500 for the first day of an investigation meeting.

Adjusting the daily rate

[9] Applying the key principles for awarding costs outlined in the leading decision of *PBO Limited (formerly Rush Security Ltd) v Da Cruz (Da Cruz)*,⁵ these emphasise that cost awards should be modest and exercised in accordance with principle. Ms Burns as director of Yoga Ltd accepted that she made errors in the management of the employment relationship with Ms Feng. I do not intend to apply the costs approach as rigidly as Mr Plunket has submitted.

[10] I consider that a 50 percent application of the daily tariff is appropriate in the circumstances.

[11] Both parties fully participated in the investigation meeting and this enabled a prompt and timely investigation of the main issues for determination.

[12] In all the circumstances, I consider that half the daily rate should apply.

Order

[13] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, I order Yoga Limited to pay Ms Feng a contribution to her costs of \$2,250.

Helen van Druten
Member of the Employment Relations Authority

⁴ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

⁵ *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.