

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 456
3244999

BETWEEN	SISI LI Applicant
AND	MASTER Z FOOD LIMITED Respondent

Member of Authority:	Marija Urlich
Representatives:	May Moncur, advocate for the Applicant Aimee Choi, advocate for the Respondent
Investigation Meeting:	On the papers
Submissions and information received:	27 June and 10 July 2025, from the applicant 23 July 2025, from the respondent
Determination:	29 July 2025

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority issued a determination on 13 June 2025 which found Ms Li had established a personal grievance for unjustified dismissal and awarded remedies in her favour.¹ Costs were reserved and a timetable set if the parties were unable to resolve this issue themselves which they advise has not been possible.

[2] Ms Li seeks by way of memorandum filed and served within the timetable a contribution to costs from Master Z Food Limited (MZF). MZF has filed a reply.

¹ *Sisi Li v Master Z Food Limited* [2025] NZERA 335.

Costs principles

[3] The Authority has power under clause 15 of Schedule 2 of the Act to award costs. This power is discretionary and must be used in a principled manner. Principles guiding the Authority's approach to costs include:

- The statutory jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience is to be considered on a case by case basis.
- Costs are not to be used as a punishment or as an expression of disapproval for an unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- Costs generally follow the event.
- Awards will be modest.
- Frequently costs are judged against a notional daily tariff.

Ms Li's claim for costs

[4] Ms Li seeks an award of more than \$8,000, as a contribution to total costs of representation incurred of \$12,328.60. Supporting invoices have been provided which include attendance at mediation. She submits the award sought is warranted given:

- she was the successful party and costs should follow the event;
- the investigation meeting required two full hearing days; and
- she made consistent efforts to settle her personal grievance.

MZF's position on costs

[5] MZF submits Ms Li was successful in only a portion of her claims, that her unsuccessful wage claim took the equivalent of a hearing day and any award of costs should be reduced accordingly to reflect limited success on the substantive matters.

Costs analysis

[6] Ms Li was the successful party and it is usual that costs follow the event and that the unsuccessful party will be required to make a contribution towards the successful party's costs.

[7] The notional daily tariff is a starting point. The applicable daily tariff is \$4,500 with each subsequent day at \$3,500. This matter involved two full days of investigation meeting, so the starting point is \$8,000. In respect of actual costs incurred mediation costs are not usually awarded. A basis to award costs for that attendance is not established. The costs incurred by Ms Li, excluding those incurred for mediation, are reasonable and I am satisfied exceed the notional daily tariff.

[8] An uplift is not warranted. While Ms Li has referred to settlement discussions between the parties, information to support consideration of a without prejudice offer save as to costs has not been provided. There are no valid offers of that nature before the Authority to consider. MZF withdrew its counterclaim at the investigation meeting. The counterclaim was underdeveloped. If it had required substantial preparation, then a basis for an increase might have been established but that is not the case.

[9] A decrease is not warranted. Ms Li was successful in the significant part of the employment relationship problem before the Authority which was her personal grievance for unjustified dismissal. At the investigation meeting the parties resolved part of the wage claim which saved hearing time.

[10] Accordingly, fair costs award, given all the relevant circumstances is in Ms Li's favour at the daily tariff of \$8,000 plus reimbursement of the filing fee of \$71.55.

Marija Urlich
Member of the Employment Relations Authority