

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 209
3079732

BETWEEN LONGSHEN LING
 Applicant

AND SUPER CUISINE GROUP
 LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Paul Young, advocate for Applicant
 William Tan, counsel for Respondent

Submissions received: 21 April and 4 May 2021 from Applicant
 27 April 2021 from Respondent

Determination: 19 May 2021

COSTS DETERMINATION OF THE AUTHORITY

A. Costs will lie where the fall.

[1] In a determination dated 14 April 2021 I awarded arrears of wages to Mr Ling for unpaid wages and holiday pay, found Mr Ling had not been constructively dismissed and declined to impose penalties on either party.¹

[2] The discretion to award costs, while broad, is to be exercised in a principled way. The primary principle is that costs follow the event. The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks' reasonable.² The principles applying to costs are well settled and do not require repeating.³

¹ *Ling v Super Cuisine Group Ltd* [2021] NZERA 145.

² Employment Relations Act 2000, Schedule 2, clause 15.

[3] An assessment of costs in the Authority will normally start with the notional daily tariff which is \$4,500 for the first day of an investigation meeting and \$3,500 for each subsequent day.⁴

[4] Mr Ling seeks a contribution to costs of \$4,500 with any adjustment deemed necessary by the Member.

[5] Super Cuisine Group Limited seeks a contribution of \$10,000 to its costs on the basis that Mr Ling was unsuccessful in his claim that he was unjustifiably dismissed.

[6] There was a mixed measure of success by both parties. Although Mr Ling was successful in his claim for arrears of wages other aspects of his claim were not successful. The situation of mixed success has been examined by the Court in *Coomer v JA McCallum and Son Limited*.⁵

[7] Ultimately I must stand back and look at things in the round.⁶ Having done so I have concluded both parties had an equal amount of success. While Mr Ling was successful in his claim for arrears of wages, his main claim that he was unjustifiably constructive dismissed was successfully defended by Super Cuisine. Neither party was successful in their claims for penalties.

[8] I have concluded that any costs incurred should lie where they fall.

Vicki Campbell
Member of the Employment Relations Authority

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.

⁵ *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

⁶ *Ibid* at [43].