

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 403
3123073

BETWEEN	LI (LEO) XU Applicant
AND	SKY STONE CONSULTING LIMITED First Respondent

Member of Authority:	Marija Urlich
Representatives:	Stephen Langton and Rebecca White, for the Applicant Simon Mitchell, for the Respondent
Investigation Meeting:	On the papers
Submissions and information received:	21 and 29 July 2022, from the Applicant No submissions or information received from the Respondent
Determination:	22 August 2022

COSTS DETERMINATION OF THE AUTHORITY

[1] The Authority issued a determination on 30 June 2022 which ordered Sky Stone Consulting Limited (SSCL) to pay Mr Xu lost wages and compensatory damages and wage and holiday pay arrears, interest on which was to be calculated.¹ Costs were reserved and a timetable set if the parties were unable to resolve this issue themselves. Mr Xu has filed a memorandum seeking an award of costs in his favour within the set timetable and a supplementary memorandum. SSCL has not filed a memorandum, not sought to vary the timetable or otherwise contacted the Authority regarding the matter of costs.

¹ *Li (Leo) Xu v Sky Stone Consulting Limited* [2022] NZERA 288.

Mr Xu's claim for costs

[2] Mr Xu seeks a total contribution to costs of \$12,937.50 made up of:

- \$8,000 being the notional starting point for a two-day investigation meeting;
- an uplift of \$1000 for SSCL's non-compliance with timetabling;
- contribution towards written submissions of \$1,750;
- costs memorandum preparation of \$500; and
- 15% uplift for GST of \$1,687.50 given Mr Xu is not GST registered.

[3] He also seeks reimbursement of disbursements incurred in relation to this matter of the filing fee of \$71.56 and translation costs of \$1,610 which includes GST. Invoices were provided in support.

[4] Mr Xu's counsel certifies total actually costs incurred exceed the contribution to costs sought.

Costs principles

[5] 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.

Costs analysis

[6] Mr Xu was the successful party. 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. It is accepted Mr Xu has incurred actual costs in respect of this matter in excess of those claimed. He has tried to resolve costs with SSCL but the documents indicate SSCL did not respond to his proposal. Mr Xu is entitled to receive a contribution to costs incurred.

[7] In assessing an appropriate award of costs the notional daily tariff is the usual starting point. The applicable daily tariff is \$4,500 for the first day and \$3,500 for every day thereafter. This matter required two hearing days. The total notional costs, applying the Authority tariff, is \$8,000.

[8] The next step in the assessment is to consider whether there are factors which warrant an increase or decrease in the tariff. There are factors which warrant an increase namely SSCL's failure to meet timetabling directions which, I accept required Mr Xu to incur additional costs. The \$1,000 uplift sought is warranted. A contribution to written submissions and memorandum is also warranted which I set at \$1000. The uplift for a GST component is not warranted.

[9] Mr Xu is entitled to reimbursement of total disbursements incurred as claimed being \$71.56 and \$1,610.

Outcome

[10] Sky Stone Consulting Limited is ordered to pay a total contribution to costs of \$10,000 to Li (Leo) Xu and reimburse him total disbursements of \$1,681.56 within 21 days of the date of this determination.

Marija Urlich
Member of the Employment Relations Authority