

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2011] NZERA Christchurch 68  
5303113

BETWEEN                      TAE WOOK HA  
   Applicant  
  
A N D                              IFF 21 (NEW ZEALAND)  
   LIMITED  
   Respondent

Member of Authority:        James Crichton  
  
Representatives:              Jong Sun Lin, Counsel for Applicant  
   No appearance for Respondent  
  
Submissions Received:      11 April 2011 from Applicant  
  
Date of Determination:      18 May 2011

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**COSTS DETERMINATION OF THE AUTHORITY**

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**The application for costs**

[1]     In the second determination of the Authority on the substantive matter which issued on 21 February 2011, the Authority determined that the applicant (Mr Ha) was unjustifiably dismissed from his employment by the respondent (IFF). Costs were reserved.

[2]     However, in the course of making closing submissions on the substantive matter, counsel for Mr Ha indicated that a significant sum was sought but provided no justification whatever for that sum. In the second determination, the Authority observed that:

*The costs claimed by counsel for Mr Ha in the course of his submission on the substantive matter (and without any supporting documentation) are completely inappropriate for a matter of this kind. Costs, if any, for this sort of proceeding would, of necessity, be a great deal more modest.*

[3] In the result, the submission for costs proper received from Mr Ha's counsel on 11 April 2011 are a great deal more realistic. The claim is for \$2,000 (plus GST) as a contribution to Mr Ha's costs.

### **Legal principles**

[4] The principles governing the award of costs in an Authority setting are well understood and usefully summarised in the Employment Court decision of *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808. Those principles include the following relevant to the present matter:

- Costs will normally follow the event;
- Costs in the Authority's investigative forum will usually be modest;
- A daily tariff approach is often helpful in determining costs in the Authority;
- A grant of costs is a discretionary remedy but the Authority must exercise its discretion in accordance with principle.

[5] In the present case, the Authority's process was unusually elongated for reasons particularly to do with IFF instructing counsel at the eleventh hour and the Authority determining that it would not be just to require the matter to proceed without giving the newly instructed counsel the opportunity to adequately prepare.

[6] Having eventually completed the investigation, the issue of costs fixing itself became problematical because the intervention of the 22 February Christchurch earthquake apparently had a dramatic effect on the revenue stream of IFF, so much so as to create difficulties for IFF in *meeting commitments* to its counsel. As a consequence, no costs submissions have been filed on behalf of IFF. However, the Authority is satisfied that IFF has had a proper opportunity to consider the filing of those submissions itself but, in the result, no submissions have been provided. The Authority is satisfied that it is safe to proceed to determine the matter in those circumstances.

**Determination**

[7] This was not a complex matter and although the investigation process was, as I have already described, somewhat more elongated than would be usual, the total time involved was less than one hearing day.

[8] The claim for costs to be fixed in the sum of \$2,000 (plus GST) is, with one exception, appropriate given the total time taken. The exception is that the Authority usually makes costs awards inclusive of GST and there is no reason to depart from that principle here.

[9] Accordingly, costs are fixed in the sum of \$2,000. IFF is directed to pay that sum to Mr Ha to assist him in his legal expenses.

James Crichton  
Member of the Employment Relations Authority