

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 126A/10
5299137

BETWEEN	HOLLYWOOD (HOLDINGS) LTD Applicant	BAKERY
AND	QIANG LI First respondent	
AND	LING ZHANG Second respondent	

Member of Authority: James Wilson

Representatives: David Liu for the applicant
No appearance by or for the respondents

Costs submissions received: 22 March 2010 from the applicant
No submissions from the respondent

Determination: 14 June 2010

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 17 March 2010 (AA 126/10) I issued a compliance order against the first respondent in the following terms:

In terms of section 137(1)(b) of the Employment Relations Act, the first respondent , Qiang Li, is order to immediately comply with the non publication order set out in the Authority's determination 258/09 of 31 July 2009. For the sake of clarity: Mr Li is ordered to immediately remove the documents covered by that order from the billboard situated outside 280 Queen St Auckland and refrain from displaying it in any other place, or otherwise publishing or showing this document to any other person other than a legal representative for the purpose of advice or proceedings.

[2] In that determination I reserved the question of costs. Mr Liu, on behalf of Hollywood Bakery, has filed a submission seeking indemnity costs against the first respondent of a total of \$3,160.50. Despite being served with a copy of Mr Liu's submission, and being invited to make submissions in reply, Qiang Li has failed to communicate with the Authority on this matter.

Hollywood Bakery's submission

[3] In his submission Mr Liu argues that this is an appropriate case where, rather than the usual tariff-based approach, the Authority should consider awarding full solicitor client costs against the first respondent. Firstly, Mr Liu says, the conduct of the respondent should be taken into account. He points out that the orders of the Authority have been systematically ignored and flouted and that Mr Li has failed to appear at the Authority to provide any explanation as to his conduct despite having been called to attend. Secondly, Mr Liu says, Hollywood Bakery should never have been put to the cost of bringing its application and that no legal costs would have been incurred by Hollywood Bakery had the first respondent abided by the Authority's orders. Mr Liu argues that Mr Li should bear the full consequences of his actions.

Discussion

[4] The substantive issue in this case was the display by Mr Li of confidential documents, which were the subject of a non-publication order issued by the Authority, on a billboard in Queen Street. The application from Hollywood Bakery sought an order requiring Mr Li to comply with the non-publication order.

[5] It is certainly true that Mr Li has consistently ignored all attempts by the Authority to engage in him in the investigation process. He ignored the statement of problem which was served on him in person on 16 March 2010. He failed to attend an investigation meeting of the Authority despite being served, again in person, a formal notice of that meeting. He has now ignored the invitation to make a submission in respects to costs.

[6] The principles to be applied by the Authority in determining the appropriate level of costs were set out by the Employment Court in *PBO (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808: and include:

There is a discretion as to whether costs would be awarded and what amount.

The discretion is to be exercised in accordance with principle and not arbitrarily.

The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.

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 of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.

It is open to the Authority consider whether all or any of the parties costs were unnecessary or unreasonable.

That costs generally follow the event.

That without prejudice offers can be taken into account.

That awards will be modest.

That frequently costs are judged against a notional daily rate.

The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

The Court went on to say:

We hold that these principles are appropriate to the Authority and consistent with its functions and powers. They do not limit its discretion and proper application of them should ensure that each case is considered in the light of its own circumstances. While these general principles are applicable also to the Court, the Authority is not bound by the Binnie principles which extend the range of costs which the Court may award beyond what could reasonably be labelled "modest." (My emphasis)

[7] While I have some sympathy with Hollywood Bakery's submission that they should be awarded full solicitor - client costs I must also be mindful of the general principle that costs awarded in the Authority should be modest. Although Hollywood

Bakery have been put to what can only be considered unnecessary expense it is also, paradoxically, true that the respondents failure to participate in the process has meant that the time required by Mr Li to attend meetings etc. has been somewhat shorter than it would otherwise have been.

Determination

[8] Taking into account all of the somewhat unusual circumstances of this case and exercising my discretion in line with the principles set out in *Da Cruz* **the first respondent Qiang Li is ordered to pay Hollywood Bakery \$2000.00 towards its costs and \$193.75 in disbursements.**

James Wilson

Member of the Employment Relations Authority