

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2019] NZERA 69  
3031392

BETWEEN                      YOON CHEOL HONG  
   Applicant  
  
AND                                CHEVRON TRAFFIC  
   SERVICES LIMITED  
   First Respondent

Member of Authority:      Vicki Campbell  
  
Representatives:            Applicant in Person  
   Garry Pollak for Respondent  
  
Submissions received:      No submissions from Applicant  
   23 January 2019 from Respondent  
  
Determination:                13 February 2019

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**COSTS DETERMINATION OF THE AUTHORITY**

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- A.      Mr Hong is ordered to pay to Chevron Traffic Services Limited the sum of \$3,000 as a contribution to costs within 28 days of the date of this determination.**

[1]      In a determination dated 14 January 2019 I found Mr Hong was not a casual employee, was owed wages for public holidays and was justifiably dismissed.<sup>1</sup> I declined Mr Hong's application to impose penalties on Chevron Traffic Services Limited.

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<sup>1</sup> *Hong v Chevron Traffic Services Limited* [2019] NZERA 14.

[2] I reserved costs, indicating that I was of a mind to let costs lie where they fall. I invited the parties to resolve the issue of costs between them. The parties have been unable to resolve the matter and I have received submissions from Chevron seeking an award of costs in its favour.

[3] 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.<sup>2</sup> The principles applying to costs are well settled and do not require repeating.<sup>3</sup>

[4] 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.<sup>4</sup> The investigation meeting took one day so the starting point is \$4,500.

[5] The Authority will take into account any offers made by the parties to settle matters:<sup>5</sup>

The public interest in the fair and expeditious resolution of disputes would be undermined if a party were able to ignore a Calderbank offer without any consequences as to costs.

[6] From the submissions received from Chevron it is apparent that calderbank offers were exchanged between the parties initiated by both Mr Hong and Chevron.

[7] Chevron wrote to Mr Hong on 15 August 2018 on a without prejudice basis and offered to resolve all matters arising out of the employment relationship by the payment of \$10,000. The letter records this as being a compensatory payment which I have concluded means it was to be paid as a gross amount under s 123(1)(c)(i) of the Act.

[8] Mr Hong was given less than two days to consider the offer however it appears from the letter that this was not the first time Chevron had offered a payment

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<sup>2</sup> Employment Relations Act 2000, Schedule 2, clause 15.

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

<sup>4</sup> Practice Note 2, Costs in the Employment Relations Authority.

<sup>5</sup> As cited in *Bluestar Print Group NZ Ltd v Mitchell* [2010] NZCA 385 at [18].

at that level. Prior to the 15 August offer Mr Hong had made a counter offer which was rejected by Chevron.

[9] The offer was made before any formal steps had been taken in the Authority. A case management call was held with the parties the week following the calderbank offer being made. During this call a timetable was set to progress the matter to an investigation meeting.

[10] I have concluded Mr Hong's apparent rejection of the calderbank offer was reasonable given that he had less than two days to fully consider the offer or seek advice. There was no urgency over resolving matters as the steps necessary to progress matters to an investigation meeting had not yet been put in place.

[11] There was a mixed measure of success by both parties. Although Mr Hong was successful in his claim that he had ongoing employment and was owed 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*.<sup>6</sup>

[12] Ultimately I must stand back and look at things in the round.<sup>7</sup> Having done so Chevron must be considered the successful party. Mr Hong's key claim was that he had been unjustifiably dismissed. Chevron successfully defended that claim plus the application for penalties. Mr Hong is ordered to contribute to the costs incurred by Chevron on the basis of the daily tariff.

[13] Given my finding regarding the rejection of the calderbank offer there will be no uplift in costs. I have however, reduced the daily tariff to reflect Mr Hong's success in having the nature of his employment relationship clarified which led to his success in receiving payment for public holidays.

[14] Mr Hong is ordered to pay to Chevron Traffic Services Limited the sum of \$3,000 as a contribution toward costs within 28 days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority

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<sup>6</sup> *Coomer v JA McCallum and Son Limited* [2017] NZEmpC 156.

<sup>7</sup> *Ibid* at [43].