

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 475
5511511

BETWEEN YIQUN HU
 Applicant

A N D SOUTH PACIFIC PHOENIX
 SOLAR COMPANY LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Patricia Finau, Counsel for the Applicant
 No appearance for the Respondent

Submissions Received: 30 October 2014 from the Applicant
 No submissions filed by the Respondent

Date of Determination: 20 November 2014

COSTS DETERMINATION OF THE AUTHORITY

- A. The respondent, South Pacific Phoenix Solar Company Limited is ordered to contribute \$1,750 towards Mr Hu's costs.**

The substantive determination

[1] In a determination of the Authority dated 24 October 2014¹ the Authority determined that the respondent, South Pacific Phoenix Solar Company Limited (South Pacific Phoenix) had unjustifiably constructively dismissed Mr Hu and breached its obligations to him.

[2] No award for distress compensation was made. However, South Pacific Phoenix was ordered to pay Mr Hu:

¹ [2014] NZERA Auckland 437.

- Lost remuneration of \$525 gross;
- Wages owed of \$1,050 gross plus interest at the rate of 5% per annum until paid in full;
- Holiday pay of \$2,184 gross together with interest at the rate of 5% per annum until paid;
- A penalty of \$500 directly to Mr Hu for failure to provide him his wages and time records.

[3] A memorandum of costs was filed on behalf of Mr Hu seeking a contribution of \$7,753.56 (including GST) towards his costs and disbursements. It was submitted on behalf of Mr Hu that all costs incurred by him were reasonable and that South Pacific Phoenix's conduct throughout had significantly and unnecessarily increased Mr Hu's costs.

[4] The Authority's power to award costs arises from Schedule 2, clause 15 of the Employment Relations Act 2000 (the Act). This confers a wide discretion on the Authority to award costs on a principled basis.

[5] The principles guiding the Authority's approach to costs are set out by the Full Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*². The principles are so well recognised, I do not need to restate them.

[6] However, the following principles highlighted in *PBO* are particularly relevant to this case, namely:

- There is a discretion as to whether costs should be awarded and as to the amount;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as punishment or an expression of disapproval of the unsuccessful party's conduct, although conduct which increased costs unnecessarily can be taken into account when inflating or reducing an award;

² [2005] 1 ERNZ 808

- It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable;
- Costs generally follow the event;
- “Without prejudice except as to costs” offers can be taken into account.

[7] The general principle is that costs follow the event, and I see no reason to depart from that in this case. Mr Hu was entirely successful in his claim against South Pacific Phoenix and should be awarded costs.

[8] Total costs incurred by Mr Hu are claimed to be \$7,475 (including GST) plus disbursements of \$278.56. An invoice was attached to support Mr Hu's costs claim. However, the professional services rendered totalling \$7,475 were not broken down so it is difficult for the Authority to determine whether such costs are reasonable.

[9] South Pacific Phoenix has not engaged in the Authority's process at all and did not respond to correspondence to him by Mr Hu. South Pacific Phoenix did not attend the Authority's investigation meeting which took less than half a day.

[10] The Employment Court in *Carter Holt Harvey v. Eastern Bays Independent Industrial Workers Union & Ors*³ observed that a notional daily tariff approach, which was to be adjusted in a principled way, was best suited to the Authority's unique jurisdiction. I adopt that approach.

[11] The normal starting point for costs in the Authority is \$3,500 per day see *Fifita (aka Bloomfield v. Dunedin Casinos Ltd)*⁴. This matter involved an investigation meeting of less than half a day. Mr Hu seeks \$7,753.56 (including GST) towards his costs and disbursements.

[12] I do not accept that an uplift in the normal daily rate is warranted in the circumstances. Accordingly, I order South Pacific Phoenix to contribute \$1,750 which is half the notional daily rate, towards the costs of Mr Hu.

Anna Fitzgibbon
Member of the Employment Relations Authority

³ [2011] NZEmpC 13

⁴ [2012] NZERA Christchurch 219