

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 126
3001444

BETWEEN	DAVID IRWIN Applicant
A N D	AUNZ INVESTMENT GROUP LIMITED First Respondent
A N D	YORK B YU Second Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Glenn Finnigan, Counsel for Applicant
May Moncur, Representative for Respondents

Date of Determination: 26 April 2017

**ORAL DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY AS TO COSTS**

- A. The Respondents, AUNZ Investment Group Limited (AUNZ) and Mr York Yu, are ordered to contribute \$1,968.75 towards the costs of the applicant, Mr David Irwin. Payment of costs is to be made by AUNZ and Mr Yu to Mr Irwin within 7 days of the date of this determination.**

Failure by AUNZ and Mr Yu to engage in the Authority's process

[1] AUNZ and Mr Yu failed to file a Statement in Reply to the Statement of Problem or to the Amended Statement of Problem, both served on them. AUNZ and Mr Yu failed to participate in the telephone conference held by the Authority on 27 March 2017, to discuss timetabling of the filing of evidence, witnesses and other matters including the need or not for an interpreter to be present.

Application for adjournment

[2] Mr Yu attended the investigation meeting today, having instructed Ms Moncur to represent him and AUNZ last night. Ms Moncur sought an adjournment of the investigation meeting but was unable to offer the Authority any proper reasons in support of her application other than her late instruction. Mr Finnigan, Counsel for Mr Irwin resisted the adjournment application on the grounds that Mr Irwin had prepared and was ready to proceed and had already waited for a lengthy period of time for monies he says he is owed by AUNZ and Mr Yu.

[3] AUNZ and Mr Yu have known about Mr Irwin's claims since a personal grievance was received by them in November 2016. AUNZ and Mr Yu have been aware of the Authority's investigation and as I have said, failed to participate. The application for an adjournment of the investigation meeting was denied.

Application for leave to reply

[4] In the absence of a Statement in Reply, Ms Moncur sought leave of the Authority for AUNZ and Mr Yu to respond to the application. The Authority granted leave for AUNZ and Mr Yu to respond to Mr Irwin's application on the basis of the documentation filed to date. Leave was granted pursuant to Regulation 8 of the Employment Relations Authority Regulations 2000.

Interpreter

[5] It became evident during the Authority's investigation meeting today, that Mr Yu required the assistance of a Mandarin interpreter. This was a matter the Authority was not aware of until today because of the failure by AUNZ and Mr Yu to participate in the process. Following a number of enquiries, the Authority has been able to obtain a Mandarin interpreter who can assist the Authority from 1.30pm today.

The Authority's power to award costs

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

[7] The Full Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*¹ held that the following basic tenets which had been applied by the Authority when considering costs were appropriate. The principles are so well known I do not intend repeating them. The Full Employment Court in *Fagotti v Acme & Co Ltd*² confirmed the continued applicability of the se broad principles when the Authority considers costs claims.

Costs determination

[8] The failure of AUNZ and Mr Yu to engage with the Authority caused delays and accordingly costs to Mr Irwin. The delays resulted in the investigation meeting not being able to commence until 1.30pm today. It is likely the investigation meeting will be part heard today with the added costs of another day being required to complete the matter.

[9] It is appropriate in the circumstances for AUNZ and Mr Yu to contribute to Mr Irwin's costs for the delays of today.

[10] The Authority's daily tariff is \$4,500.00 for the first day of an investigation meeting.

[11] Pursuant to Schedule 2, clause 15 of the Act, I consider costs of \$1,968.75 appropriate in the circumstances. This has been calculated based on a 3.5 hour delay in starting the investigation meeting today. The meeting was to start at 10am but was not able to start until 1.30pm.

[12] AUNZ and Mr Yu are ordered to pay to Mr Irwin the sum of \$1,968.75 as a contribution to his costs. Payment is to be made by AUNZ and Mr Yu to Mr Irwin within 7 days of the date of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority

¹ [2005] ERNZ 808, para.44

² [2015] NZEmp C 135 at [115]