

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Jiyong Jeong (Applicant)
AND Hanyang Corporation Limited (Respondent)
REPRESENTATIVES Jaehon Song, Advocate for Applicant
Anna Fitzgibbon, Counsel for Respondent
MEMBER OF AUTHORITY Janet Scott
INVESTIGATION MEETING 19 July 2006
DATE OF DETERMINATION 15 March 2007

COSTS DETERMINATION

[1] The parties have been unable to settle the issue of costs between them and the Authority has received submissions from the parties which are now considered in disposing of the matter.

[2] Under the Authority's determination dated 19 July 2006 (AA 307/06) the applicant succeeded in one of a number of claims he brought against his former employer.

[3] In their submissions counsel take quite different views of the degree of the applicant's success in the matter. The respondent has also directed the Authority's attention to a Calderbank offer made to the applicant some months prior to the Investigation Meeting. That offer was for exactly the same amount that was awarded to the applicant by the Authority under the s.123 (1) (c) (i) head of the remedies awarded. I note that the applicant succeeded to a greater extent than the total amount of the Calderbank offer to the extent that an award of lost remuneration was also directed - albeit it was a relatively modest award.

[4] Further, while the applicant did not succeed in respect of a number of the claims he brought against the respondent, he did succeed in one of the significant claims brought by him, in that I found that he had a personal grievance (unjustified disadvantage). It cannot be said, therefore that the applicant had very limited success in the Authority as found by my colleague Alastair Dumbleton in *Sangster v Tannner Group Ltd* AA 193A/05.

[5] As a result I am not having regard to the Calderbank offer and find that costs should follow the event having regard to the principles set down in *PBO Ltd v Da Cruz* AC 2A/05.

[6] Having regard to the principles approved in that case I find that some account should be had to the fact that the respondent's costs were added to unreasonably in that it had to defend itself against claims that were patently merit less. I note in particular the claim that the respondent did not

provide the applicant with a written employment agreement. That was the case but the applicant was complicit in the breach and the claim should not have been brought.

Determination

[7] In all the circumstances of this case I determine that costs should be set in the applicant's favour at the lower level of costs awarded by the Authority for a hearing that occupied somewhat less than a full day.

[8] I therefore direct the respondent to pay to the applicant the sum of \$1000 as a contribution to the legal costs he incurred in the matter.

Janet Scott
Member of Employment Relations Authority