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Li v Kang (Auckland) [2018] NZERA 146; [2018] NZERA Auckland 146 (4 May 2018)

Last Updated: 18 May 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 146
3020152

BETWEEN ZHIBIN LI Applicant

AND BOFENG KANG Respondent

Member of Authority: Vicki Campbell

Representatives: Eloise Callister-Baker for Applicant

Ezra Tie for Respondent

Submissions received: 24 April 2018 from Applicant

11 April 2018 from Respondent

Determination: 4 May 2018

COSTS DETERMINATION OF THE AUTHORITY

A. Mr Li is ordered to pay to Mr Kang the sum of \$1,500 as a contribution to his costs within 14 days of the date of this determination.

[1] In a determination dated 14 March 2018¹ I found Mr Li was an independent contractor and declined to investigate his claim for arrears of wages.

[2] I reserved costs, indicating that if the parties were unable to resolve costs, both parties would have the opportunity to file cost memoranda and evidence. The parties have been unable to resolve the matter.

[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.

1 [2018] NZERA Auckland 86.

[4] The Authority has the power to order any party to pay to any other party such costs and expenses as the Authority thinks reasonable.² The principles applying to costs are well settled and do not require repeating.³

[5] An assessment of costs 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.⁴

[6] By the consent of the parties the matter was determined on the papers before the Authority, including submissions from each party. Mr Kang says he incurred costs of \$8,273.64. Mr Kang seeks a contribution to his costs of \$5,457.63 based on the daily tariff with an uplift to account for wasted costs in defending Mr Li's claims.

[7] Mr Li asks the Authority to let costs lie where they fall or alternatively order the payment of \$500 as a contribution to

costs.

[8] Mr Kang seeks an uplift to the daily tariff because he says Mr Li pursued hopeless claims, failed to properly particularise his claims and commenced the proceedings to pressure him to settle a civil claim (there is a civil dispute between the parties unrelated to an employment relationship). I am not satisfied Mr Li's case was entirely hopeless or that there was an underlying motivation for taking his claim.

[9] The information provided by Mr Kang in support of his application for costs shows that his total costs included preparation for, and attendance at, mediation. Those costs are not recoverable in the Authority.

[10] In my determination I advised the parties that as the matter had been determined on the papers, any costs award would be less than half of the usual daily tariff.

[11] The usual daily tariff is \$4,500 for a full day's hearing. As the matter was determined on the papers the parties did not have to attend a hearing. The matter was

² [Employment Relations Act 2000](#), Schedule 2, clause 15.

³ *PBO Ltd v Da Cruz* [2005] NZEmpC 144; [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106] – [108].

⁴ Practice Note 2, Costs in the Employment Relations Authority.

not overly complex. Taking all the circumstances of this case into account I consider an appropriate contribution to Mr Kang's costs is \$1,500.

[12] Mr Li is ordered to pay to Mr Kang the sum of \$1,500 as a contribution to his costs within 14 days of the date of this determination.

Vicki Campbell

Member of the Employment Relations Authority

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