

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 199
5284124

BETWEEN NANZHENG LIU
 Applicant

AND SOUTH PACIFIC TIMBER
 (1990) LTD Respondent

Member of Authority: James Wilson

Representatives: Charlotte Taylor for the applicant
 Craig Andrews for the respondent

Costs submissions 3 November 2010 from the applicant
received: 27 September 2010 from the respondent

Determination: 12 May 2011

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 30 August 2010, I determined, as a preliminary issue, that Mr Liu was not an employee of South Pacific Timber (1990) Ltd (“South Pacific”). In that determination I requested that the parties attempt to resolve the question of costs between themselves. Unfortunately they have not been able to do so and Mr Andrews, for South Pacific, has filed a submission seeking a contribution from Mr Liu towards his client’s costs.

The Submissions

[2] Mr Andrews says that his clients costs in defending Mr Liu’s claim amounted to \$24,500.00 and he seeks a *modest contribution of* \$4500.00. He has enclosed invoices detailing his client’s legal costs and argues that, in addition to attending the Authority’s investigation meeting, the parties were required to prepare extensive legal submissions and prepare for two telephone conferences. He cites a recent Authority determination - *Bell-Booth v Wingate & Farquhar Ltd*, ERA Auckland AA308A/10 2

September 2010, in which the Authority member awarded costs of \$4,500 in what Mr Andrews says were similar circumstances to the current case.

[3] Ms Taylor, for Mr Liu argues that the matter did not involve complex areas of law and that the investigation meeting did not occupy a full day. She argues that the Authority's usual tariff should be applied and suggests a \$2000.00 award would be appropriate

Discussion

[4] The principles to be applied by the Authority in determining the appropriate level of costs were set out by the Employment Court in *PBO (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808: and include:

There is a discretion as to whether costs would be awarded and what amount.

The discretion is to be exercised in accordance with principle and not arbitrarily.

The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.

Equity and good conscience is to be considered on a case by case basis.

Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.

It is open to the Authority consider whether all or any of the parties costs were unnecessary or unreasonable.

That costs generally follow the event.

That without prejudice offers can be taken into account.

That awards will be modest.

That frequently costs are judged against a notional daily rate.

The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

The Court went on to say:

We hold that these principles are appropriate to the Authority and consistent with its functions and powers. They do not limit its discretion and proper application of them should ensure that each case is considered in the light of its own circumstances. While these general principles are applicable also to the Court, the Authority is not bound by the Binnie principles which extend the range of costs which the Court may award beyond what could reasonably be labelled “modest.” (My emphasis)

[5] The issues in this case were not particularly complex. However while the investigation meeting did not occupy a full day, the parties were required to participate in two conference calls and the respective submissions were useful assisting the Authority to deal with issues reasonably efficiently. Under all the circumstances the appropriate use of my discretion in this matter is to award a contribution to South Pacific’s costs of \$3500.00.

Determination

[6] **Nanzheng Liu is to pay South Pacific Timber (1990) Ltd, \$3500.00 as a contribution towards their costs.**

James Wilson

Member of the Employment Relations Authority